

# Exhibit 2

Page 1

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 -----x  
5 AUSTIN FENNER and  
6 IKIMULISA LIVINGSTON,

7  
8 Plaintiffs,  
9 v. 09 Civ. 9832  
10 (BSJ) (RLE)

11 NEWS CORPORATION, NYP HOLDINGS,  
12 INC. d/b/a THE NEW YORK POST  
13 and DAN GREENFIELD and  
14 MICHELLE GOTTHELF,

15 Defendants.

16 -----x

17  
18 DEPOSITION OF AUSTIN FENNER  
19 New York, New York  
20 January 11, 2012

21  
22 Reported by:  
23 MARY F. BOWMAN, RPR, CRR  
24 JOB NO. 45411

25

<p style="text-align: right;">Page 30</p> <p>1 FENNER  2 meeting?  3 A. I went to seek legal counsel.  4 Q. And was your -- and did you do  5 that?  6 A. I eventually did seek legal  7 counsel.  8 Q. Was that Mr. Thompson?  9 A. That is correct.  10 Q. Besides yourself, Mr. Fenner, who  11 attended the meeting?  12 A. My coplaintiff, Ikimulisa  13 Livingston, Leonard Green, Gary Miller, Neil  14 Graves.  15 Q. So it was five people?  16 A. I believe that's correct.  17 Q. And did you discuss with those  18 individuals the bringing of a lawsuit against  19 the New York Post?  20 A. That was the intent of the meeting  21 because we all felt we needed legal  22 protection.  23 Q. And you're aware that only  24 Ms. Livingston and yourself have filed  25 lawsuits against the Post?</p>	<p style="text-align: right;">Page 31</p> <p>1 FENNER  2 A. That's correct.  3 Q. Did you want Mr. Green or  4 Mr. Miller or Mr. Graves to join in your  5 lawsuit?  6 A. I don't know if it is a question of  7 whether I wanted them to do it or not. I  8 wanted to hear what they had to say. That's  9 why I went to that meeting.  10 Q. What did they have to say about  11 joining in the lawsuit?  12 MR. THOMPSON: Objection.  13 A. Well, we were trying to figure out  14 what we should do, what should be our next  15 step.  16 Q. What did they have to say about  17 joining the lawsuit?  18 MR. THOMPSON: Objection.  19 A. They expressed the same thought,  20 same idea, trying to figure out what we  21 should do, how we should do it.  22 Q. Did they say they would not join in  23 the lawsuit?  24 A. They didn't say that.  25 Q. Did they say that they would?</p>
<p style="text-align: right;">Page 32</p> <p>1 FENNER  2 A. They expressed the idea that we  3 should try to figure out what we should do  4 next.  5 Q. And did you -- when you met with  6 your attorneys, Mr. Thompson, were you  7 accompanied by any of the people that were at  8 that meeting?  9 A. I went by myself.  10 Q. Have you had any conversations with  11 Mr. Graves or Mr. Green or Mr. Miller about  12 the reasons why they chose not to join in  13 your lawsuit?  14 A. I didn't ask them why they did not  15 join the lawsuit.  16 Q. Did they tell you why they chose  17 not to join in the lawsuit?  18 A. I can't recall them saying,  19 answering why they didn't join the lawsuit.  20 Q. Do you know if they have lawyers?  21 A. I don't know.  22 Q. You were criticized by your  23 editors, Michelle Gotthelf and Dan Greenfield  24 for your performance at the Post, correct?  25 A. They wrote false evaluations which</p>	<p style="text-align: right;">Page 33</p> <p>1 FENNER  2 they used to discriminate against me and used  3 as a tool to fire me from the Post.  4 Q. Mr. Fenner, it is a yes or no  5 question.  6 MR. THOMPSON: Objection.  7 Q. You were criticized by your editors  8 for your performance at the Post, correct?  9 A. They wrote unfair and false  10 evaluations.  11 Q. Mr. Fenner, this is a yes or no  12 question.  13 MR. THOMPSON: Let him answer the  14 question.  15 Q. You were criticized, they  16 criticized you right?  17 A. Can you repeat your question.  18 Q. You were criticized by Ms. Gotthelf  19 and Mr. Greenfield for your performance at  20 the Post, right?  21 A. In what way?  22 Q. They criticized you?  23 A. They wrote unfair and false  24 evaluations --  25 Q. Mr. Fenner, you are going to get a</p>

<p style="text-align: center;">1 FENNER</p> <p>2 Q. Any of Obama's political</p> <p>3 adversaries, either as a local politician or</p> <p>4 national one.</p> <p>5 A. Well, the scope of the story was he</p> <p>6 was running for the presidency of the United</p> <p>7 States.</p> <p>8 Q. My question was, did you interview</p> <p>9 any of Obama's political adversaries while</p> <p>10 you were in Chicago?</p> <p>11 A. I don't recall. If I had a copy of</p> <p>12 my story, it would refresh my recollection.</p> <p>13 Q. You would -- would you agree with</p> <p>14 me that this e-mail of May 2, Fenner</p> <p>15 Exhibit 1, is a highly critical e-mail?</p> <p>16 A. Michelle Gotthelf criticized my</p> <p>17 work, yes.</p> <p>18 Q. What is the basis, do you believe</p> <p>19 that her criticism in this e-mail was an</p> <p>20 example of Ms. Gotthelf discriminating</p> <p>21 against you?</p> <p>22 A. No.</p> <p>23 Q. Did you write a response to</p> <p>24 Ms. Gotthelf to this e-mail?</p> <p>25 A. I don't recall if I did.</p>	<p style="text-align: center;">1 FENNER</p> <p>2 Q. Did you disagree with Ms. Gotthelf</p> <p>3 in that e-mail?</p> <p>4 A. The story I wrote was a solid</p> <p>5 story. It wasn't -- it was not a sensational</p> <p>6 story. It wasn't a -- it was a tale of what</p> <p>7 was happening. It was not a hot story.</p> <p>8 Q. So you agreed with Ms. Gotthelf</p> <p>9 that you did not get what she sent you to</p> <p>10 Chicago to get?</p> <p>11 A. Can I elaborate?</p> <p>12 Q. No. It is a simple question. Did</p> <p>13 you agree with her or not?</p> <p>14 A. The story I produced -- my goal was</p> <p>15 to get an interview with Jeremiah Wright. I</p> <p>16 didn't get that.</p> <p>17 Ms. Gotthelf is saying that she</p> <p>18 wanted a -- she wanted a sensational story,</p> <p>19 the story I produced was not that.</p> <p>20 Q. The Post is a tabloid newspaper,</p> <p>21 correct?</p> <p>22 A. That's correct.</p> <p>23 Q. Its goal is to uncover and run</p> <p>24 sensational stories, correct?</p> <p>25 A. That's correct.</p>
<p>Page 40</p> <p>1 FENNER</p> <p>2 Q. And you did not do that on that</p> <p>3 trip, correct?</p> <p>4 A. Correct.</p> <p>5 MR. LERNER: I am going to mark</p> <p>6 Fenner Exhibit 2, AF 561 through 563.</p> <p>7 For the record, Fenner Exhibit 1 is</p> <p>8 Bates number NYPFL 610.</p> <p>9 (Exhibit 2, document Bates stamped</p> <p>10 AF561 through 563 marked for</p> <p>11 identification, as of this date.)</p> <p>12 Q. Take a look at Fenner Exhibit 2.</p> <p>13 We will get some other copies going around.</p> <p>14 Fenner Exhibit 2 is an e-mail dated</p> <p>15 Monday, May 19, 2008. Mr. Fenner, do you</p> <p>16 recognize this e-mail?</p> <p>17 A. I'm still reading it.</p> <p>18 I recognize it.</p> <p>19 Q. The e-mail was written by Neil</p> <p>20 Sloane to you --</p> <p>21 A. That is correct.</p> <p>22 Q. -- on that date?</p> <p>23 Who is Neil Sloane?</p> <p>24 A. He is an editor.</p> <p>25 Q. Does he work for the city desk?</p>	<p>Page 41</p> <p>1 FENNER</p> <p>2 A. That is correct.</p> <p>3 Q. And what story does this e-mail</p> <p>4 concern?</p> <p>5 A. There is a singer, a crooner named</p> <p>6 R. Kelly and he was being charged in Chicago</p> <p>7 criminal court for sexual abuse of an</p> <p>8 under-age girl.</p> <p>9 Q. That was a story of national</p> <p>10 interest, is that fair to say?</p> <p>11 A. Yes.</p> <p>12 Q. Were you sent to Chicago to get</p> <p>13 that story?</p> <p>14 A. That's correct.</p> <p>15 Q. And Mr. Sloane, in his e-mail to</p> <p>16 you, was critical of the story that you</p> <p>17 wrote, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And he showed you actually two</p> <p>20 versions of the story, a version number 1 and</p> <p>21 version number 2, and asked you to compare</p> <p>22 the two, right?</p> <p>23 A. That's correct.</p> <p>24 Q. Just for the record, an e-mail</p> <p>25 version number 1 was the story that you</p>

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<p>1 FENNER  2 submitted and version number 2 was the story  3 that was rewritten by somebody at the Post,  4 right?</p> <p>5 A. They added copy to the story, yes.  6 Q. And Mr. Fenner, you did not list  7 Mr. Sloane as up with of the people who  8 discriminated against you at the Post when I  9 asked you that question earlier. Do you  10 recall that?</p> <p>11 A. I recall that.  12 Q. And do you stand by that answer?  13 In other words, was Mr. Sloane somebody who  14 discriminated against you?</p> <p>15 A. No.  16 Q. And do you consider this e-mail to  17 be an example of discrimination against you?  18 A. No.  19 Q. In the two versions, do you recall  20 or did you determine from reading it today  21 what the difference is between the two  22 versions of these stories?  23 A. The second version is longer. It  24 has like three more sentences to it.  25 Q. Did you, do you know what piece of</p>	<p>1 FENNER  2 information is in the second version, the  3 version that was rewritten, that wasn't in  4 the first version?</p> <p>5 MR. THOMPSON: Objection, document  6 speaks for itself.  7 Q. Mr. Fenner, I would like to direct  8 you --  9 A. I'm reading the copy.  10 Q. I am going to direct your  11 attention -- you can read it -- but I am  12 going to draw your attention to the paragraph  13 in the second story, "They face one  14 significant roadblock."  15 A. I see that.  16 Q. Mr. Fenner, would you agree that  17 the fact that the victim of the child  18 pornography crime denied being involved and  19 that that fact is in the rewritten story but  20 it was not in your story?  21 A. That's correct.  22 Q. Would you agree that that is an  23 interesting and unique aspect to the story  24 involving R. Kelly?  25 MR. THOMPSON: Objection.</p>
	<p>Page 44</p> <p>1 FENNER  2 A. Yes.  3 Q. And that was not in your original  4 story, correct?  5 MR. THOMPSON: Objection.  6 A. No, I don't have it here.  7 Q. Did you know that fact when you  8 wrote your story?  9 A. Yes.  10 Q. And you chose to leave it out?  11 A. I didn't choose to leave it out.  12 Q. Did you forget to include it?  13 A. I was under incredible deadline  14 pressure that day. I had to obtain press  15 credentials to get into the courtroom;  16 otherwise, I would not have been able to  17 cover the case and that's why I was sent to  18 Chicago.  19 The story I wrote is a preview  20 story, a curtain raiser, as they call it, and  21 I was under the gun to try to find the  22 sheriff's office for Cook County, get my  23 credentials and file by the 5 o'clock  24 deadline in New York.  25 Q. So my question was, did you forget</p> <p>Page 45</p> <p>1 FENNER  2 to include it?  3 A. I would have wanted to put that in  4 the story, yes.  5 Q. Have you ever covered a criminal  6 case in which the person that the prosecutor  7 said is the victim of the crime actually  8 comes forward in the trial and says that's  9 not me?  10 A. I've covered many criminal court  11 cases.  12 Q. Have you ever, have you ever  13 covered a case in which the person the  14 prosecutors say is the victim actually comes  15 forward and says I'm not the victim of this  16 crime, this didn't happen to me?  17 A. I've covered cases where the victim  18 has denied, has denied those cases, like a  19 domestic violence case.  20 Q. Have you ever covered a case in  21 which the victim says I wasn't even there?  22 A. I recall covering cases where the  23 victim denies that the crime was committed  24 against them.  25 Q. You would agree that it is a unique</p>

<p>Page 50</p> <p>1 FENNER  2 A. I can't recall that.  3 Q. Did Mr. Hechtman rewrite that  4 story?  5 A. I don't know.  6 Q. Do you know if that story ever ran?  7 A. I don't know. I can't recall.  8 Q. Did you do anything to correct the  9 factual and grammatical errors in that story?  10 A. I worked on many, many stories for  11 the New York Post, well over 150. I can't  12 recall exactly what I did in this particular  13 instance.  14 Q. Do you believe that Mr. Hechtman  15 discriminated against you while you were at  16 the Post?  17 A. No.  18 Q. And who was Mr. Hechtman?  19 A. He was the night editor.  20 MR. LERNER: All right, it is 5 to  21 11. We have a 11 o'clock call with the  22 court so we will take a break now.  23 THE VIDEOGRAPHER: The time is  24 10:55 a.m. We are off the record.  25 (Recess)</p>	<p>Page 51</p> <p>1 FENNER  2 THE VIDEOGRAPHER: The time is  3 11:23 a.m. We are on the record.  4 Q. Mr. Fenner, do you recall being  5 assigned a story about a radio personality  6 named Wendy Williams?  7 A. I wasn't assigned that story. It  8 was an enterprise story I wrote and pitched  9 and produced for the New York Post.  10 Q. And where was that story based out  11 of?  12 A. New York City.  13 Q. And how did you come to develop  14 that story?  15 MR. THOMPSON: Objection.  16 A. I was working as a journalist for  17 the Post and I have many sources for stories.  18 At that time, Ken Thompson was a practicing  19 attorney in New York and I had developed a  20 relationship with him and I had learned about  21 the Wendy Williams story through him.  22 Q. This was in or about June of 2008?  23 A. I can't recall the date right now.  24 Q. Do you recall -- did you write that  25 story?</p>
<p>Page 52</p> <p>1 FENNER  2 A. I did.  3 Q. Do you recall your editors  4 criticizing you for missing the lead in that  5 story?  6 A. I can't recall right now. If you  7 can show me something, it would refresh my  8 recollection.  9 Q. Take a look at Fenner Exhibit 3.  10 There is a -- the fourth paragraph down,  11 under the handwritten note "Sloane."  12 Do you see that paragraph? We  13 permitted him to write a story that he did  14 pitch on WBLS Shock Jock Wendy Williams and  15 Austin actually missed the whole point of the  16 story. Do you see that?  17 A. I read that.  18 Q. Was that a criticism that was  19 communicated to you at the time?  20 A. I can't recall.  21 Q. Did Mr. Sloane tell you that the  22 lead of the story was buried in the middle of  23 what you wrote?  24 A. My editor and I collaborated on the  25 story. I wrote the story and he made a</p>	<p>Page 53</p> <p>1 FENNER  2 suggestion that we go with another element  3 that was in the story.  4 Q. What was that element?  5 A. If I had the story in front of me,  6 I could tell you.  7 Q. Was it that Wendy Williams' husband  8 had planned to assassinate a rival DJ of  9 Wendy Williams?  10 A. I think that's what he wanted to go  11 with as the lead.  12 Q. As the lead. Do you remember what  13 you had as the lead?  14 A. No.  15 Q. Did you agree with him that that  16 was the best lead for that story?  17 A. Well, you know, you could write a  18 story in many different ways. I've written  19 stories and the lead has been changed --  20 Q. I understand that. My question  21 is --  22 A. I'm not finished.  23 MR. THOMPSON: Mr. Lerner, you have  24 to let him finish answering your  25 question. You can't just cut him off and</p>

<p>1 FENNER 2 he wasn't finished. 3 Q. The question was, did you agree? 4 MR. THOMPSON: No, no. He wasn't 5 finished. Mark, you have cut him off 6 repeatedly. 7 MR. LERNER: Of course I have. 8 MR. THOMPSON: It is improper. You 9 have to let the witness finish answering 10 your question. If you don't, this 11 deposition is not going to work. 12 MR. LERNER: I agree with that, 13 Ken. It is not going to work if the 14 witness doesn't answer the question. 15 MR. THOMPSON: Please let him 16 answer the question that you posed. 17 MR. LERNER: I know he is going to 18 try. 19 Q. This is the question. The question 20 was, did you agree that the lead that 21 Mr. Sloane ultimately put on the story was 22 the better lead for the story? 23 A. I don't have the story in front of 24 me. I need to read the whole story. 25 Q. Let's put it in front of you.</p>	<p>1 FENNER 2 Mr. Fenner, I am putting in front 3 of you a document that has been marked as 4 Fenner Exhibit 4, which is a binder of 5 stories that carry your byline, and the Bates 6 numbers are NYPFL 2633 through 3214. And I 7 have opened it to NYPFL 3196. 8 (Exhibit 4, document Bates stamped 9 NYPFL 2633 through 3214 marked for 10 identification, as of this date.) 11 MR. THOMPSON: What was that Bates 12 number again? 13 MR. LERNER: 3196. 14 MR. THOMPSON: Thanks. 15 Q. Mr. Fenner, do you recall the lead 16 as you have written the story? 17 A. This is the published story. 18 Q. Agreed. Do you recall the lead on 19 the story that you submitted? 20 A. I wrote many, many stories during 21 my tenure at the New York Post. I wrote over 22 150 stories. I worked on over 150 stories 23 for the paper. I don't recall the lead 24 before it was -- before we came to this one. 25 Q. Do you have any reason to believe</p>
<p>1 Page 56</p> <p>1 FENNER 2 that Mr. Sloane did not take the piece of the 3 story that you had placed in the middle and 4 turned it into the lead? 5 A. No, I believe that he wanted to go 6 with this lead. 7 Q. And in your opinion today, did his 8 making this the lead improve the story? 9 A. Many reporters write stories and 10 the leads are always changed. The editor is 11 the final arbiter -- 12 Q. Was this a better lead? 13 A. I wasn't finished. 14 Q. Was this a better lead? 15 A. I wasn't finished my comment. 16 Q. That's the problem. It was a 17 comment. You need to provide an answer. 18 MR. THOMPSON: He was providing an 19 answer. 20 Q. And the question was, did this lead 21 improve the story? 22 A. I like his lead. It is a good 23 lead. You can go with -- you can go with 24 many different leads on a story. The New 25 York Times is going to write a story with a</p>	<p>1 Page 57</p> <p>1 FENNER 2 different lead than the New York Post. The 3 Daily News is going to write a story with a 4 different lead. Sometimes they are the same, 5 sometimes they are different. 6 Q. Was this the best lead for the New 7 York Post? 8 A. I like his lead, I agree with it. 9 Q. You do not believe Mr. Sloane's 10 actions with respect to the story were 11 discriminatory, do you? 12 A. His actions being changing the lead 13 on a story? 14 Q. Yes. 15 A. No. 16 Q. Having discussed this now, do you 17 recall Mr. Sloane being critical of you at 18 the time for not adopting the lead that he 19 ultimately went with in your original story? 20 A. He suggested we go with a different 21 lead. That happens. 22 Q. Was he critical of you? 23 A. He suggested we go with this lead. 24 He said next time -- he wanted to go with 25 this lead.</p>

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1 FENNER	1 FENNER
2 Q. What did you say?	2 Sloane.
3 A. I agreed -- he said we should go 4 with the rub-out lead.	3 Q. Do you recall a story about a 4 window washer who fell 47 stories and lived?
5 Q. And what did he say about next 6 time?	5 A. I do.
7 A. I was -- he didn't say next time. 8 There was no next time. We were talking 9 specifically about this story.	6 Q. Do you recall your editors 7 criticizing you for your work on that story, 8 in reporting that story?
10 Q. My question is was he making a 11 general remark about your reporting when he 12 commented to you about this story?	9 A. Yes.
13 MR. THOMPSON: Objection.	10 Q. What was their criticism?
14 A. He wanted to change the lead and I 15 agreed with his change.	11 A. I can't recall right now.
16 Q. Did he say words to the effect of 17 next time, Austin, you need to find the lead 18 that the Post would want to run?	12 Q. Were you unable to secure an 13 interview with the individual who fell or his 14 family members during your first attempts to 15 do so?
19 A. No.	16 A. This was a very difficult story to 17 get. This was a man who was washing a window 18 on the 47th floor of a skyscraper with his 19 brother. He watched his brother fall and die 20 and he miraculously survived. I was able to 21 get this man to talk about this nightmarish 22 event in his life.
20 Q. And lead with that?	23 Q. Do you recall what your editors 24 criticized you for?
21 A. No.	25 A. I think there is an e-mail about
22 Q. Did he say anything about your 23 performance going forward that he wanted to 24 see changed?	Page 61
25 A. No. I did great work under Neil	FENNER
Page 60	you have read this?
1 FENNER	3 A. I have a memory of reading this 4 e-mail.
2 it.	5 Q. Back in -- when you were employed 6 at the Post?
3 Q. And what is your recollection now?	7 A. Yes.
4 A. If you can show it to me, it would 5 refresh my recollection.	8 Q. And what was your reaction to that 9 criticism back then?
6 Q. Take a look at Fenner Exhibit 3, 7 second paragraph.	10 A. It was false and unfair. It was 11 discriminatory.
8 A. I read it.	12 Q. Why?
9 Q. Does that refresh your 10 recollection?	13 A. Because I did get the interview. 14 All right.
11 A. It does.	15 Q. Did your editors have to send you 16 back to keep trying to get that interview?
12 Q. And what was, what did your editors 13 say to you at that time?	17 A. I had been traveling on many 18 different stories out of town. I had been 19 traveling the country --
14 A. Do you want me to read what's 15 there?	20 Q. Did your editors send you back to 21 get that interview?
16 Q. No, I want you to -- you said it 17 refreshed your recollection, I would like to 18 know what --	22 A. That's correct.
19 A. This is it. That is the 20 recollection.	23 Q. And so that is -- it is true that 24 they sent you back. Did they send you back 25 once, twice, how many times?
21 Q. So you have that recollection now?	16
22 A. These words are the recollection.	TSG Reporting - Worldwide
23 Q. Is it your recollection or is it 24 simply -- in other words, I want to know, do 25 you have a memory of this exchange now that	800-702-9580

<p style="text-align: right;">Page 62</p> <p>1 FENNER</p> <p>2 A. They sent me back because I 3 couldn't get the interview with the 4 individual who we are talking about because 5 his wife was there. She said he was in a 6 rehab facility.</p> <p>7 He had fallen 47 stories. He was 8 trying to get his life back together. I 9 interviewed the wife probably three times, 10 and she was not there. So the reason why I 11 went back because he was not physically in 12 the home, he was in a rehab facility in New 13 Jersey, near South Orange.</p> <p>14 Q. And where did you eventually get 15 the interview?</p> <p>16 A. At his home.</p> <p>17 Q. Did the story run?</p> <p>18 A. Yes, it did.</p> <p>19 Q. Was it a good story?</p> <p>20 A. Yes.</p> <p>21 Q. Did you agree with your editors 22 that you should go back to try to persist and 23 try to get that interview?</p> <p>24 A. Yeah, why not. It is a great 25 story.</p>	<p style="text-align: right;">Page 63</p> <p>1 FENNER</p> <p>2 Q. How long did it take you to get 3 that interview?</p> <p>4 A. Like I said a moment ago, I went to 5 his house several times. I interviewed his 6 wife on at least three different occasions, I 7 attempted to have her trust me with their 8 family story and take me to the rehab 9 facility where her husband was staying.</p> <p>10 And through the course of time, I 11 was building a relationship and trust. It 12 doesn't happen overnight. Sometimes it 13 happens that day. But you have to work 14 people to gain their trust and this woman was 15 relaying as she told me --</p> <p>16 Q. Mr. Fenner, I understand that --</p> <p>17 A. I wasn't finished my sentence.</p> <p>18 Q. My question is how long did it take 19 you to get that interview?</p> <p>20 A. Can I finish my statement?</p> <p>21 Q. I'm afraid you can't. The question 22 is, how long did it take you to get that 23 interview?</p> <p>24 MR. THOMPSON: He can finish 25 answering your question.</p>
<p style="text-align: right;">Page 64</p> <p>1 FENNER</p> <p>2 A. I don't understand your question 3 when you said how long did it take.</p> <p>4 Q. How many days did it take?</p> <p>5 A. I just told you, he was not home.</p> <p>6 Q. So I understand. Did it take a 7 week? Did it take more than a week?</p> <p>8 A. He was away from the home --</p> <p>9 Q. How long between --</p> <p>10 A. For probably weeks. He had fallen 11 47 stories.</p> <p>12 Q. What is the basis of your opinion 13 that Mr. Greenfield's criticism of you was 14 discriminatory?</p> <p>15 A. It is untrue and it is unfair. He 16 says we had to constantly hound -- where are 17 we -- Austin to get the window washer story. 18 And I just explained where the window washer 19 was.</p> <p>20 Q. Did he hound you?</p> <p>21 A. Greenfield?</p> <p>22 Q. Yes.</p> <p>23 A. When you say -- what do you mean 24 hound me? Did he --</p> <p>25 Q. Did Greenfield or your editors</p>	<p style="text-align: right;">Page 65</p> <p>1 FENNER</p> <p>2 hound you --</p> <p>3 A. They dispatched me-</p> <p>4 Q. -- hound you to get that story?</p> <p>5 A. They dispatched me to the window 6 washer's house.</p> <p>7 Q. Multiple times?</p> <p>8 A. We had to go back because he wasn't 9 there.</p> <p>10 Q. Did they send you back multiple 11 times to keep trying?</p> <p>12 A. He was not there every time we 13 arrived at his home.</p> <p>14 Q. Did they send you back?</p> <p>15 A. I had been traveling on other 16 stories and working on other stories.</p> <p>17 Q. Did you receive --</p> <p>18 A. I --</p> <p>19 Q. Did you receive instructions --</p> <p>20 A. I wasn't finished my statement.</p> <p>21 Q. -- instructions from your editors 22 to go back?</p> <p>23 A. I was juggling multiple 24 assignments. I had to do enterprise work. I 25 was traveling on out-of-town assignments. I</p>

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<p>1 FENNER  2 was covering breaking news.  3 Q. Did they send you back multiple  4 times?  5 A. Yes.  6 Q. And what is the basis for your  7 belief that the criticism was based on your  8 race?  9 A. Because this was eventually used in  10 my evaluations which were discriminatory and  11 unfair in assessing my work. I had done  12 great work for the paper. I had done  13 award-winning work for the paper.  14 Q. Did Mr. --  15 MR. THOMPSON: He is answering your  16 question, Mr. Lerner. You cannot cut him  17 off.  18 Please continue, Mr. Fenner.  19 A. And I had gotten exclusives for the  20 paper. This was used to discriminate me  21 because I am black. They used this in  22 treating me different than my white  23 colleagues with those evaluations and this  24 was part of the tool they used when I had  25 done incredible work for the paper.</p>	<p>1 FENNER  2 Q. And did Mr. Greenfield ever use a  3 racial epithet?  4 A. He was a loose cannon.  5 Q. Did he ever use a racial epithet?  6 A. He cursed at me. He yelled at me.  7 He said what the fuck are you doing.  8 Q. Did he ever --  9 A. He said to me, you better get your  10 fucking ass over there. He went off on me.  11 Q. Did he ever use a racial epithet?  12 A. He cursed at me.  13 Q. This is a yes or no answer,  14 Mr. Fenner?  15 A. He debased me.  16 Q. Did he ever use a racial epithet?  17 A. He --  18 Q. Mr. Fenner. If you can't answer  19 the question, we will get a court order  20 requiring you to answer the question, because  21 that is a requirement.  22 Did he ever use a racial epithet?  23 A. No.  24 MR. THOMPSON: We are going to take  25 a break.</p>
<p>1 FENNER  2 MR. LERNER: Let's take a break.  3 MR. THOMPSON: Sure.  4 THE VIDEOGRAPHER: The time is  5 11:43 a.m. We are off the record.  6 (Recess)  7 THE VIDEOGRAPHER: The time is  8 11:59 a.m., we are on the record.  9 MR. LERNER: Mr. Thompson, I know  10 you had a discussion with your client  11 outside of the room. We need to have the  12 questions that I ask answered directly.  13 Otherwise, we are not going to finish the  14 deposition in seven hours.  15 MR. THOMPSON: Mr. Lerner, he has  16 answered your question directly.  17 MR. LERNER: I understand that's  18 your opinion.  19 MR. THOMPSON: It is a fact. The  20 record will reflect that.  21 MR. LERNER: It is not my opinion?  22 MR. THOMPSON: It doesn't matter.  23 The record is what it is.  24 MR. LERNER: My point is not to  25 argue with you whether or not he is doing</p>	<p>1 FENNER  2 it. My point is to let you know if it  3 persists, we will call the court.  4 MR. THOMPSON: You can call the  5 court any time you want. The purpose for  6 us being here is to ask him questions, so  7 ask him.  8 Q. Mr. Fenner, are you ready to  9 proceed?  10 A. I'm ready.  11 Q. On the -- with respect to the  12 window washer, Mr. Greenfield's criticism of  13 you was that you did not take the initiative  14 to return to the window washer each time to  15 try to get that interview, is that correct?  16 A. I did on my own.  17 Q. I am asking you if that was his  18 criticism of you?  19 A. I made several attempts. I took  20 the initiative. I knew it was a great story  21 and I got a great story.  22 Q. Was that Mr. Greenfield's criticism  23 of you, that you failed to take the  24 initiative?  25 A. I don't recall if he told me that.</p>

<p style="text-align: right;">Page 70</p> <p>1 FENNER</p> <p>2 Q. Did somebody tell you that?</p> <p>3 A. I can't recall right now.</p> <p>4 Q. Did -- was there, when you were</p> <p>5 sent back by your editors, did they express</p> <p>6 annoyance to you that they were having to</p> <p>7 tell you to go back?</p> <p>8 A. I can't recall.</p> <p>9 Q. Who told you to go back?</p> <p>10 A. My editors dispatched me to the</p> <p>11 window washer's house.</p> <p>12 Q. When you say dispatched, it means</p> <p>13 they instructed you to go back there and try</p> <p>14 to get that interview?</p> <p>15 A. That's correct.</p> <p>16 Q. Do you recall how many times they</p> <p>17 dispatched you back to the house?</p> <p>18 A. When I went to the house and I said</p> <p>19 he wasn't there and we are not going to get</p> <p>20 anything --</p> <p>21 Q. My question is, do you recall how</p> <p>22 many times they instructed to you to go back?</p> <p>23 A. We visited the house at least three</p> <p>24 or four times.</p> <p>25 Q. And was there an instruction from</p>	<p style="text-align: right;">Page 71</p> <p>1 FENNER</p> <p>2 your editor prior to each of those times?</p> <p>3 A. Yes, we were working in</p> <p>4 collaboration.</p> <p>5 Q. Over what period of time between</p> <p>6 your first contact with the house trying to</p> <p>7 get the story and the time that you got the</p> <p>8 story, how much time elapsed?</p> <p>9 A. Between the first time we visited</p> <p>10 his home?</p> <p>11 Q. Yes.</p> <p>12 A. And the publication of the story?</p> <p>13 Q. Yes.</p> <p>14 A. How many times had we gone there?</p> <p>15 Q. No, how much time elapsed? How</p> <p>16 many days or weeks?</p> <p>17 A. I don't know exactly how many days.</p> <p>18 But like I said, the man was recuperating in</p> <p>19 the facility.</p> <p>20 Q. So you don't remember how long it</p> <p>21 was?</p> <p>22 A. I said I don't recall right now.</p> <p>23 Q. Was it more or less than one week?</p> <p>24 A. Yes.</p> <p>25 Q. So it was more than one week?</p>
<p style="text-align: right;">Page 72</p> <p>1 FENNER</p> <p>2 A. It was more than one week.</p> <p>3 Q. Was it more than --</p> <p>4 A. He was in a rehab facility.</p> <p>5 Q. Was it more than two weeks?</p> <p>6 A. What's the question?</p> <p>7 Q. How much time elapsed between your</p> <p>8 first attempt to get the interview and the</p> <p>9 time the story ran? All I am trying to get a</p> <p>10 sense of is how long did it take.</p> <p>11 A. It wasn't a week. I don't think --</p> <p>12 it wasn't a week. And I don't recall exactly</p> <p>13 how long. It might have been two, could have</p> <p>14 been three, but I don't know.</p> <p>15 Q. OK. Were you assigned to cover the</p> <p>16 Columbia expansion, Columbia University</p> <p>17 expansion?</p> <p>18 A. No, I worked with Dan Colarusso and</p> <p>19 told him this was an area that needed</p> <p>20 attention, that there were no newspapers</p> <p>21 paying attention to the Columbia expansion</p> <p>22 and we should own it.</p> <p>23 Q. Did you have a source inside</p> <p>24 Columbia University regarding the Columbia</p> <p>25 expansion?</p>	<p style="text-align: right;">Page 73</p> <p>1 FENNER</p> <p>2 A. I was developing sources, yes.</p> <p>3 Q. Did you develop a source inside</p> <p>4 Columbia University?</p> <p>5 A. Yes.</p> <p>6 Q. Who -- how did you develop that</p> <p>7 source?</p> <p>8 A. We were working the story and going</p> <p>9 to community board meetings and going to</p> <p>10 protests where people who were angry about</p> <p>11 the expansion plan had a vested interest in</p> <p>12 the issue.</p> <p>13 Q. Did you quote that source in your</p> <p>14 stories?</p> <p>15 A. I quoted several sources in my -- I</p> <p>16 quoted several sources in my stories.</p> <p>17 Q. Was that -- were those sources</p> <p>18 named in the stories?</p> <p>19 A. They might have been.</p> <p>20 Q. Did you have any confidential</p> <p>21 sources within Columbia University?</p> <p>22 A. I would have to see the work that</p> <p>23 we produced to see if it says source or not.</p> <p>24 Q. As you sit here today, can you</p> <p>25 think of any confidential source that you had</p>

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1 FENNER	1 FENNER
2 within Columbia University on those stories?	2 down by the city desk?
3 A. I can't recall right now.	3 A. Yes.
4 Q. Did your editors assign you stories 5 relating to the Columbia University 6 expansion?	4 Q. How many? 5 A. I can't recall the exact number. 6 Q. Were you ever criticized by your 7 editors for your reporting on the Columbia 8 University expansion?
7 A. No, I pitched a series of stories. 8 One of those stories was about the Cotton 9 Club business, and through our work, through 10 doing great work on that story, we helped 11 this man save his business from the imminent 12 domain issue that was hovering over many of 13 the businesses in Columbia, in the Columbia 14 expansion plan.	9 A. I can't recall right now.
10 Q. How many stories did you pitch 11 relating to the Columbia University 12 expansion?	10 Q. Did your editors tell you that you 11 were not pitching enough stories relating to 12 the Columbia University expansion?
13 A. Many.	13 A. I can't recall that right now.
14 Q. How many ran?	14 Q. Were there any stories about the 15 Columbia University expansion that were 16 developed by the city desk and assigned to 17 you?
15 A. Maybe five. I can't recall the 16 exact number right now.	15 A. I can't recall if -- I can't recall 16 if you're talking about a particular story 17 that they might have assigned. I know I 18 pitched many stories, that was part of my 19 enterprise week.
20 Q. Do you know how many you pitched? 21 A. I can't recall the exact number 22 right now.	20 Q. By -- you were hired in 21 approximately the middle of 2007, right?
23 Q. Were any of your stories turned	23 A. May 2007.
Page 76	Page 77
1 FENNER	1 FENNER
2 Q. May of '07. By May of '08, you had 3 been at the Post about a year, correct?	2 Q. What were you -- what does the term 3 "street reporter" mean to you?
4 A. Correct.	4 A. You mean someone who is not in the 5 office?
5 Q. And what were your -- what were 6 your reporting duties by May of 2008? In 7 other words, were you in the street most of 8 the time or were you in the office most of 9 the time?	5 Q. Yes. Is that what you were 6 primarily were by mid '08?
10 A. I was hired as an enterprise 11 reporter which required me to pitch stories, 12 cover breaking news, and cover out of town 13 assignments for the paper. So it was a mix.	6 A. Not at all.
14 Q. Did that group of responsibilities 15 put you in the street most of the time or in 16 the office? What was the --	7 Q. You were in the office?
17 MR. THOMPSON: Objection.	8 A. I was a senior reporter working at 9 the paper.
18 Q. -- what was the balance of your 19 time?	10 Q. Where were you performing your job?
20 A. It was a mix.	11 A. I just said it was a mix.
21 Q. Would you agree that about a year, 22 just using about a year in May of 2008, that 23 you were primarily working as a street 24 reporter?	12 Q. So sometimes you were in the 13 office, sometimes you were out?
25 A. No.	14 A. Sometimes I was in the office, 15 sometimes I was out on breaking news 16 assignments, sometimes I was traveling on 17 behalf of the paper.
20 Q. Approximately what percentage of 21 your time by May of '08 -- you had been at 22 the Post for one year -- were you in the 23 office?	18 Q. Approximately what percentage of 19 your time by May of '08 -- you had been at 20 the Post for one year -- were you in the 21 office?
24 A. I can't give you a percentage or 25 breakdown right now.	22 A. I can't give you a percentage or 23 breakdown right now.

<p style="text-align: right;">Page 78</p> <p>1 FENNER</p> <p>2 Q. Was it 10 percent, 20 percent?</p> <p>3 MR. THOMPSON: Objection.</p> <p>4 A. I think it was a mix. It might</p> <p>5 have been 33 percent on all -- I was -- it</p> <p>6 might have been a third on each one. I don't</p> <p>7 know.</p> <p>8 Q. A third in the office, a third on</p> <p>9 the street in New York, and a third on the</p> <p>10 road traveling? Is that what you mean by 33</p> <p>11 percent each?</p> <p>12 A. I don't have an exact mathematical</p> <p>13 breakdown to give you.</p> <p>14 Q. I understand that. By May of 2008,</p> <p>15 how much of your work was -- what percentage</p> <p>16 of your work was the work of a street</p> <p>17 reporter?</p> <p>18 A. I couldn't tell you that number.</p> <p>19 Q. How much of your work was producing</p> <p>20 enterprise stories?</p> <p>21 A. Like I said, it was a mix. And I</p> <p>22 can't give you a mathematical breakdown.</p> <p>23 Q. What enterprise stories did you</p> <p>24 produce during the first year of your</p> <p>25 employment at the Post?</p>	<p style="text-align: right;">Page 79</p> <p>1 FENNER</p> <p>2 A. I did several. I did many. I</p> <p>3 wrote stories about an identity theft story.</p> <p>4 It was a military burial -- it was a -- it</p> <p>5 was an identity theft story.</p> <p>6 Q. Got it. Identity theft in a</p> <p>7 military burial?</p> <p>8 A. Right.</p> <p>9 Q. What else?</p> <p>10 A. It was a man who had been convicted</p> <p>11 of murder in Connecticut who had mistakenly</p> <p>12 assumed his neighbor had molested his child</p> <p>13 and I was able to get this man to send a</p> <p>14 handwritten, handwritten letter about why he</p> <p>15 did this and what went wrong.</p> <p>16 Q. A letter to whom?</p> <p>17 A. It was addressed to me at the New</p> <p>18 York Post.</p> <p>19 Q. Can you define an enterprise story?</p> <p>20 A. An enterprise story is a story</p> <p>21 that's off the radar, a story that is</p> <p>22 original reporting and of interest to the</p> <p>23 public.</p> <p>24 Q. Does it involve more research and</p> <p>25 more reporting than a nonenterprise story?</p>
<p style="text-align: right;">Page 80</p> <p>1 FENNER</p> <p>2 A. It can.</p> <p>3 Q. But it is original, off the radar</p> <p>4 and it is of interest to the public?</p> <p>5 A. Those are some of the elements.</p> <p>6 Q. Can you think of any other</p> <p>7 enterprise story that you wrote in your first</p> <p>8 year at the Post?</p> <p>9 A. The Columbia expansion stories, the</p> <p>10 Wendy Williams story. And there were others.</p> <p>11 Q. Can you tell me what the others</p> <p>12 were?</p> <p>13 A. If I had a list, I could refresh my</p> <p>14 recollection.</p> <p>15 Q. Did you ever decline a request to</p> <p>16 stay late to cover a breaking news story?</p> <p>17 A. Did I ever decline a request to</p> <p>18 stay late?</p> <p>19 Q. Yes, to cover a breaking news</p> <p>20 story?</p> <p>21 A. I think you're referring to a story</p> <p>22 where I had child care issues and I had to</p> <p>23 pick up my daughter from my mother's house</p> <p>24 and my wife was out of town.</p> <p>25 My mother, at that time, would have</p>	<p style="text-align: right;">Page 81</p> <p>1 FENNER</p> <p>2 been about 86. So I think that's what you</p> <p>3 might be referring to.</p> <p>4 Q. So the answer is yes, you did?</p> <p>5 A. Can you repeat the question?</p> <p>6 Q. Did you ever decline a request to</p> <p>7 stay late to cover a breaking news story?</p> <p>8 A. I had child care issues. I had</p> <p>9 to -- I called my editors to see if they</p> <p>10 could send someone to relieve me. So the</p> <p>11 answer is I never declined a request to stay</p> <p>12 late, no. The answer is no.</p> <p>13 Q. The answer is ---</p> <p>14 A. I didn't decline a request. I</p> <p>15 called in to get relief on a story. I never</p> <p>16 declined a request to stay late on a story.</p> <p>17 Q. And what happened after you made</p> <p>18 that call?</p> <p>19 A. The editors looked to see if there</p> <p>20 were any other reporters who were starting</p> <p>21 their shifts and who could relieve me.</p> <p>22 Q. Did they find any?</p> <p>23 A. I can't recall in this particular</p> <p>24 one. I would assume that happened.</p> <p>25 Q. You did not cover that story?</p>

<p>1 FENNER</p> <p>2 A. No, I was on the story. I had been</p> <p>3 on the story from probably 7 in the morning</p> <p>4 and this was probably about 8 at night.</p> <p>5 Q. What was the story?</p> <p>6 A. I can't recall the story at this</p> <p>7 very moment.</p> <p>8 Q. Did you file a story?</p> <p>9 A. I covered many stories. I'm not</p> <p>10 exactly sure which one you might be referring</p> <p>11 to.</p> <p>12 Q. Did you ever file a story on that</p> <p>13 occasion?</p> <p>14 A. I can't recall exactly which story</p> <p>15 this is.</p> <p>16 Q. Did you -- do you -- did you ever</p> <p>17 decline a request to stay late to cover a</p> <p>18 breaking news story on another occasion?</p> <p>19 MR. THOMPSON: Objection.</p> <p>20 A. No. Did I ever decline a request</p> <p>21 to stay late? Is that what you are asking?</p> <p>22 Q. Yes.</p> <p>23 A. Never. I never declined to do any</p> <p>24 work. I fulfilled all my responsibilities.</p> <p>25 I was highly motivated to go cover any story</p>	<p>1 FENNER</p> <p>2 that was on the docket of the paper.</p> <p>3 Q. How would you rate your writing</p> <p>4 skills, Mr. Fenner?</p> <p>5 A. They're good.</p> <p>6 Q. Are they on a -- what does "good"</p> <p>7 mean?</p> <p>8 A. We all want to improve and do</p> <p>9 better. You always leave room. That's what</p> <p>10 keeps you going. So good is when you do</p> <p>11 exceptional work and you are always pushing</p> <p>12 yourself to do better.</p> <p>13 Q. Did you think you can do better as</p> <p>14 a writer?</p> <p>15 A. I've done exceptional work, I've</p> <p>16 done award-winning work and I always push</p> <p>17 myself to do better.</p> <p>18 Q. Do you think you can be a better</p> <p>19 writer than you are?</p> <p>20 A. Yes.</p> <p>21 Q. Did your editors criticize your</p> <p>22 writing?</p> <p>23 A. Yes.</p> <p>24 Q. In those instances when they</p> <p>25 criticized your writing, did you agree with</p>
<p>Page 84</p>	<p>Page 85</p>

1 FENNER 2 A. Well, if we go to the Wendy 3 Williams example. 4 Q. I am just asking, were some of your 5 stories not good? 6 A. No, they wouldn't have been 7 published if they weren't good. 8 Q. Were some of your stories not 9 published? 10 A. As far as I knew, all of my stories 11 was published. 12 Q. Every one of your stories were 13 published? 14 A. Sometimes editors don't publish 15 stories for space reasons because other 16 breaking news occurs and they want to go with 17 a bigger story that developed during the 18 course of a day. 19 Q. Isn't it the case that your stories 20 that you submitted were subject to editing 21 and rewriting by another reporter called a 22 rewrite? 23 A. Many of the reporters at the paper 24 were rewrite reporters. 25 Q. That's what I am asking you. I am	1 FENNER 2 asking if you are reporting on the street and 3 you file a story, it goes to a rewrite who 4 then rewrites the story before it is 5 published, right? 6 A. Sometimes. 7 Q. So the stories that you -- that are 8 published under your byline aren't 9 necessarily stories that you wrote the final 10 story on, right? 11 MR. THOMPSON: Objection. 12 A. I don't know because I'm not inside 13 the office and seeing who is editing the 14 story. 15 Q. You read your stories that are 16 published? 17 A. That's correct. 18 Q. Under your byline? 19 A. That's correct. 20 Q. You will know if what's published 21 in the paper the next day, how that compares 22 to what you submitted? 23 A. There might have been stories where 24 a lead was changed, yes. 25 Q. Where they are completely
1 FENNER 2 rewritten, right? 3 A. No. 4 Q. It never happened that a story that 5 you submitted was completely rewritten? 6 A. You are asking about the whole 7 universe of the stories I worked on and I 8 worked on many different stories. 9 Q. Well, yeah. 10 A. Do you -- there is a question? 11 Q. Yes. 12 A. Which is what? 13 Q. Isn't it a fact that stories that 14 you submitted were rewritten by rewrite 15 reporters? 16 MR. THOMPSON: Let the record 17 reflect that Jordan Lippner just said 18 "Jesus Christ" in response to 19 Mr. Fenner's answer. That is totally 20 inappropriate and we ask Mr. Lippner not 21 to do that at this deposition. 22 Q. Well, Mr. Fenner? 23 A. Yes. 24 Q. Isn't it a fact that stories that 25 you submitted to the Post were rewritten by	1 FENNER 2 rewrite reporters? 3 A. They may have been. 4 Q. Mr. Fenner, I am going to place in 5 front of you a document marked NYPFL 477 6 through 480 and it will be marked Fenner 7 Exhibit 5. 8 (Exhibit 5, document Bates stamped 9 NYPFL 477 through 480 marked for 10 identification, as of this date.) 11 Q. Did you receive this performance 12 appraisal in 2008? 13 A. In 2008? 14 Q. Yes. 15 A. It is dated -- yes. 16 Q. Did you review it and sign it? 17 A. I read it, I signed it to 18 acknowledge that I saw it. 19 Q. The overall rating that the 20 appraisal gave you was a 6 out of 7 with 1 as 21 the highest and 7 is the lowest, correct? 22 A. Correct. 23 Q. Six means must improve, rarely 24 meets standards, correct? 25 A. That's what it says.

<p style="text-align: right;">Page 94</p> <p>1 FENNER</p> <p>2 Q. And on the last page, there is an 3 employee comment section. Did you submit any 4 comments in response to this performance 5 review?</p> <p>6 A. I wrote a self-evaluation.</p> <p>7 Q. In 2008?</p> <p>8 A. I wrote a self-evaluation in 2008 9 which stands as my record for what I thought 10 about my work and the strength of my work as 11 a journalist at the New York Post.</p> <p>12 Q. Are you sure that you wrote one in 13 2008?</p> <p>14 A. Yes.</p> <p>15 Q. As opposed to 2009?</p> <p>16 A. Yes.</p> <p>17 Q. Have you seen that document in 18 connection with this lawsuit?</p> <p>19 A. I can't recall right now.</p> <p>20 Q. The self-evaluation was done prior 21 to your getting the APA review, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. So you did the self-evaluation, you 24 then received this APA review, and you did 25 not comment on the APA review after you</p>	<p style="text-align: right;">Page 95</p> <p>1 FENNER</p> <p>2 received it, right?</p> <p>3 A. I did not comment because I wanted 4 my self-evaluation to stand as a record of 5 what I did for the year. The space is very 6 small.</p> <p>7 Q. Do you recall what that 8 self-evaluation said?</p> <p>9 A. If you have a copy of it, it would 10 refresh my recollection.</p> <p>11 Q. Have you seen it? I actually I had 12 this question a moment ago. You said you 13 couldn't recall if you had ever seen that 14 document in connection with this lawsuit, is 15 that correct?</p> <p>16 A. The self-evaluation?</p> <p>17 Q. A 2008 self-evaluation?</p> <p>18 A. I would have written the 19 self-evaluation.</p> <p>20 Q. My question is, have you, did you 21 produce it in this lawsuit?</p> <p>22 A. I can't recall.</p> <p>23 Q. You would regard this as a very 24 negative -- would you regard this as a very 25 negative evaluation?</p>
<p style="text-align: right;">Page 96</p> <p>1 FENNER</p> <p>2 A. I would regard it as a racially 3 discriminatory document which was used 4 against me.</p> <p>5 Q. And what is the basis of your 6 believing that the criticisms in this 7 document were based on your race?</p> <p>8 A. It was false and untrue. And this, 9 these are falls and untrue and don't reflect 10 the true work that I did as a reporter, as a 11 journalist at the New York Post.</p> <p>12 Q. How do you know that the falsity of 13 them that you allege was done because you are 14 African American?</p> <p>15 A. Because they treated me differently 16 than my white colleagues at the paper.</p> <p>17 Q. How do you know that this negative 18 performance evaluation was negative because 19 you are African American?</p> <p>20 A. Because they wanted to get me out 21 of the paper.</p> <p>22 Q. How do you know that they wanted to 23 do that because you are African American?</p> <p>24 A. I had been verbally screamed at and 25 yelled at and harassed by my editors since</p>	<p style="text-align: right;">Page 97</p> <p>1 FENNER</p> <p>2 Michelle Gotthelf had assumed control of the 3 city desk. And when I saw this, this review, 4 my words to Michelle Gotthelf and Amy 5 Scialdone was I'm being with set up. That's 6 what I said to them.</p> <p>7 And during the course of that 8 interview, Amy Scialdone said to me, do you 9 really want to be here? This is a human 10 resources manager who was showing me the 11 door.</p> <p>12 Q. When did that -- when did you have 13 that conversation with Ms. Scialdone?</p> <p>14 A. When I was presented with this 15 document.</p> <p>16 Q. Did Ms. Scialdone or Mr. Greenfield 17 or Ms. Gotthelf ever tell you that the reason 18 they were giving you a negative performance 19 review was because you were African American?</p> <p>20 A. Did they say that verbally to me, 21 is your question?</p> <p>22 Q. Yes, that's my question.</p> <p>23 A. They treated me --</p> <p>24 Q. Did they say that verbally to you?</p> <p>25 A. The way they treated me --</p>

<p style="text-align: right;">Page 98</p> <p>1 FENNER</p> <p>2 Q. Mr. Fenner, it is a yes or no</p> <p>3 question. Did they tell you that it was</p> <p>4 because of your race?</p> <p>5 A. No, they didn't have to say it was</p> <p>6 because I'm black.</p> <p>7 Q. So the answer is no, they didn't?</p> <p>8 A. I said no, they didn't have to say</p> <p>9 it was because I'm black.</p> <p>10 Q. But they -- OK. And did anybody</p> <p>11 else at the New York Post tell you that the</p> <p>12 reason for this negative performance</p> <p>13 evaluation was because you're African</p> <p>14 American?</p> <p>15 A. There is many people that work at</p> <p>16 the New York Post. I was presented this</p> <p>17 review by my supervisor and Amy Scialdone.</p> <p>18 Q. Did Ms. Gotthelf ever use racially</p> <p>19 derogatory language with you that referenced</p> <p>20 the fact that you are an African American?</p> <p>21 A. She was outright nasty to me. She</p> <p>22 was constantly yelling at me and giving me</p> <p>23 unfair criticisms about my work.</p> <p>24 Q. Did she ever say anything that used</p> <p>25 a racial epithet or referred to the fact that</p>	<p style="text-align: right;">Page 99</p> <p>1 FENNER</p> <p>2 you are African American?</p> <p>3 A. Not to my knowledge. I didn't hear</p> <p>4 her use a racial epithet.</p> <p>5 Q. And same question about</p> <p>6 Ms. Scialdone, did she ever do that?</p> <p>7 A. Not to my knowledge, I didn't hear</p> <p>8 her use a racial epithet.</p> <p>9 Q. Did Michelle Gotthelf or Dan</p> <p>10 Greenfield ever raise their voice at white</p> <p>11 reporters?</p> <p>12 A. Not to my knowledge. If they did,</p> <p>13 I wasn't around.</p> <p>14 Q. Do you know for a fact that</p> <p>15 Michelle Gotthelf and Dan Greenfield did not</p> <p>16 yell at white reporters?</p> <p>17 A. They did not yell at white</p> <p>18 reporters?</p> <p>19 Q. Yeah, do you know that for a fact?</p> <p>20 A. I don't know -- I don't know it for</p> <p>21 a fact.</p> <p>22 Q. Do you have any reason to believe</p> <p>23 that Michelle Gotthelf and Dan Greenfield</p> <p>24 never yelled at white reporters working on</p> <p>25 the city desk?</p>
<p style="text-align: right;">Page 100</p> <p>1 FENNER</p> <p>2 A. Repeat your question.</p> <p>3 Q. Do you have any reason to believe</p> <p>4 that --</p> <p>5 MR. LIPPNER: Mark.</p> <p>6 Q. Withdrawn.</p> <p>7 One of the criticisms in this</p> <p>8 performance evaluation is that during your</p> <p>9 first year at the Post, you did not initiate</p> <p>10 or produce top notch enterprise stories for</p> <p>11 the Post?</p> <p>12 A. Your question is?</p> <p>13 Q. Is that criticism, was that</p> <p>14 criticism of you factually based?</p> <p>15 A. It is unfair. It is unfair --</p> <p>16 Q. Why is it unfair?</p> <p>17 A. Because I did -- I did great work</p> <p>18 as a journalist, as a reporter for the New</p> <p>19 York --</p> <p>20 Q. Did you produce top notch --</p> <p>21 A. Yes.</p> <p>22 MR. THOMPSON: Mr. Lerner, don't</p> <p>23 cut off the witness. You have to let the</p> <p>24 witness finish answering his question.</p> <p>25 Q. -- for the New York Post?</p>	<p style="text-align: right;">Page 101</p> <p>1 FENNER</p> <p>2 A. I did great work, award-winning</p> <p>3 work.</p> <p>4 Q. What award did you win for your</p> <p>5 work at the Post during the first year?</p> <p>6 A. The New York Post covered the Obama</p> <p>7 inauguration and they won the coveted New</p> <p>8 York Press Club Award in 2010. I wrote a</p> <p>9 story, enterprise story about a Harlem</p> <p>10 congregation that Martin Luther King visited</p> <p>11 ten days before his assassination and this</p> <p>12 congregation was attending.</p> <p>13 Q. Mr. Fenner, --</p> <p>14 A. I wasn't finished.</p> <p>15 Q. I don't need to know all the</p> <p>16 details about the story. My question is what</p> <p>17 award did you win and you said the New York</p> <p>18 Post won an award.</p> <p>19 A. I was part of a team, the</p> <p>20 inauguration team that won the New York Press</p> <p>21 Club Award.</p> <p>22 Q. And how many people were reporting</p> <p>23 on Obama's inauguration for the New York</p> <p>24 Post?</p> <p>25 A. There were several people on the</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 102	Page 103
FENNER		
team.		
Q. More than five?		
A. It was a historic event. So there were -- there was a team and everyone contributed to the production of an award-winning piece.		
Q. The award was not issued in your name, was it?		
A. It was issued to the staff of the New York Post and the contributors who worked on pieces that were published for the inauguration and with that, they beat out --		
Q. How long was the story that you wrote on the bus ride?		
A. I don't know.		
Q. Was it --		
A. It was several inches.		
Q. Was it a long story?		
A. It was part of the package. It was a sidebar.		
Q. It was less than 300 words, wasn't it?		
A. I don't know the number of words in the story.		
Page 104		
FENNER		
A. All reporters pitch stories; some are good, some are bad, some are accepted, and others are published. Dan and Michelle unfairly criticized many of the stories that I had suggested to go into the paper.		
Q. And why did you believe that their criticism of your proposed stories was unfair?		
A. Well, some of them -- criticisms of my stories were unfair? They wanted me out of the paper. They didn't want me working there as a black senior reporter at the paper.		
Q. Well, you said that they criticized the stories that you suggested to be published. Why were those -- why were those criticisms unfair about your story, about your stories?		
MR. THOMPSON: Objection.		
Q. What were they saying about your pitches that was unfair?		
A. They didn't have an interest in elevating my career. They didn't -- they would not -- they would summarily knock down		
Page 105		
FENNER		
and be dismissive of stories that I had proposed to get into the paper.		
Q. Did you receive a written warning after you got this 2008 performance evaluation?		
A. I was given a final written warning, and at the same time, I was presented with this evaluation.		
Q. I am going to show you that document that has been marked as Fenner Exhibit 6. It is NYPFL 501.		
(Exhibit 6, document Bates stamped NYPFL 501 marked for identification, as of this date.)		
Q. This is that final written warning?		
A. Yes.		
Q. Did you disagree or agree with the criticisms in this written warning?		
A. I strongly disagreed with it.		
Q. And did you write anything in response to this warning?		
A. During that meeting?		
Q. Or following it?		
A. During that meeting, I had told		

<p style="text-align: right;">Page 106</p> <p>1 FENNER  2 Michelle Gotthelf and Amy Scialdone that I  3 was being set up and when Amy asked me did I  4 really wanted to be at the paper, I realized  5 that they were out to get me. So making any  6 comment on this paper, on this sheet of paper  7 would have been pointless.</p> <p>8 Q. Did you tell them at that meeting  9 that you believed that you were being set up  10 because you are African American?</p> <p>11 A. Yes.</p> <p>12 Q. What did you say?</p> <p>13 A. I said to them, I'm being set up.</p> <p>14 Q. Did you say the words, "because I'm  15 African American"?</p> <p>16 A. I didn't say the words at that time  17 because I'm African American.</p> <p>18 Q. You said "I'm being set up"?</p> <p>19 A. Yes. My jaw dropped and hit the  20 table.</p> <p>21 Q. But you did not tell them that you  22 believed that the reason you were being set  23 up was discrimination on the basis of race,  24 is that correct?</p> <p>25 A. I was trying to wrap my mind about</p>	<p style="text-align: right;">Page 107</p> <p>1 FENNER  2 what had happened and the fact that this --  3 Q. My question, Mr. Fenner --  4 A. I'm not finished talking.  5 Q. I'm not asking you about what you  6 are trying to wrap your mind around. I am  7 asking you, did you tell them that you  8 believed, at that meeting, that you believed  9 that the reason you were being set up was  10 race?</p> <p>11 A. I didn't say to them I'm being set  12 up because I'm black. I said to them, I'm  13 being set up.</p> <p>14 Q. Did you do anything, after  15 receiving this written warning, did you do  16 anything to change your performance,  17 improving, to respond to these criticisms?</p> <p>18 A. Despite the fact that I received  19 this review, I went on to write solid, great  20 pieces of journalism for the paper.</p> <p>21 Q. Did you change anything in response  22 to this written warning?</p> <p>23 A. Did I change what?</p> <p>24 Q. The way you did your job?</p> <p>25 A. I continued to work hard just like</p>
<p style="text-align: right;">Page 108</p> <p>1 FENNER  2 I had did during the first year of my  3 employment at the New York Post.</p> <p>4 Q. Did you change anything about the  5 way you did your job from the way you were  6 doing it before you got the written warning?</p> <p>7 MR. THOMPSON: Objection.</p> <p>8 A. Can you repeat the question.</p> <p>9 Q. Did you change anything about the  10 way you did the job from the way you were  11 doing it before you got the written warning?</p> <p>12 A. I was doing solid work before I got  13 the warning and despite the fact that I felt  14 that this review, this evaluation was  15 discriminatory, I did -- I continued to do  16 good work at the paper.</p> <p>17 Q. So you can't think of anything  18 can't think of anything that you changed  19 about the way you did your work?</p> <p>20 A. Because of this?</p> <p>21 Q. Yes.</p> <p>22 A. I'm always working to improve  23 myself. That's a tenet that I use.</p> <p>24 Q. But you can't think of anything  25 that you did to change the way you did your</p>	<p style="text-align: right;">Page 109</p> <p>1 FENNER  2 job in response to this written warning,  3 correct?</p> <p>4 A. I felt this review was unfair.</p> <p>5 Q. And is my statement correct --</p> <p>6 A. So to do something in response to  7 something that was unfair --</p> <p>8 Q. OK, so because you thought the  9 review was unfair, the warning was unfair,  10 you decided you would -- you were not going  11 to change the way you did your job?</p> <p>12 MR. THOMPSON: Objection.</p> <p>13 A. That's not true. That's not what I  14 am saying.</p> <p>15 Q. That is what it sounds like you're  16 saying.</p> <p>17 MR. THOMPSON: Objection.</p> <p>18 A. The answer is no.</p> <p>19 Q. The answer is no about what?</p> <p>20 A. Your question was that I wasn't  21 going to continue to do anything about the  22 way I did my job. Is that right?</p> <p>23 Q. We are arguing with each other.  24 Simple question.</p> <p style="text-align: right;">In response to receiving this</p>

<p>1 FENNER</p> <p>2 warning, did you change the way you did your</p> <p>3 job, yes or no?</p> <p>4 A. I continued to work hard. And if</p> <p>5 you're -- I'm always working to improve</p> <p>6 myself, so I'm not exactly sure what you're</p> <p>7 asking me.</p> <p>8 Q. Mr. Fenner, it is -- the question</p> <p>9 is simple and it is clear. In response to</p> <p>10 receiving this warning, did you change the</p> <p>11 way you did your job?</p> <p>12 You need to provide an answer in</p> <p>13 your deposition for the record. Is the</p> <p>14 answer yes, or no?</p> <p>15 A. The answer is I am -- yes, I am</p> <p>16 always working to improve myself, but this</p> <p>17 document, this review was shocking to me. It</p> <p>18 made me -- I couldn't believe I was</p> <p>19 getting -- this -- I found it discriminatory.</p> <p>20 Q. Mr. Fenner, is the answer yes or</p> <p>21 no?</p> <p>22 A. All I can tell you is I worked</p> <p>23 hard. It is not -- if you are asking me if</p> <p>24 this document caused me to work harder,</p> <p>25 caused me to -- I realized that --</p>	<p>1 FENNER</p> <p>2 Q. I am asking you, did it cause you</p> <p>3 to work harder or change the way you did your</p> <p>4 job?</p> <p>5 A. It made me pause because I realized</p> <p>6 I was being set up for termination, so yes is</p> <p>7 the answer.</p> <p>8 Q. Did it change the way you did your</p> <p>9 job?</p> <p>10 A. Yes.</p> <p>11 MR. THOMPSON: Objection.</p> <p>12 Q. How so?</p> <p>13 A. It made me pause because I realized</p> <p>14 that there was a picture being created for my</p> <p>15 termination.</p> <p>16 Q. So what did you do differently</p> <p>17 after receiving the warning?</p> <p>18 A. I had to triple-cross my Is and my</p> <p>19 Ts, I had to watch my back, I had to watch</p> <p>20 what Dan Greenfield and Michelle Gotthelf</p> <p>21 were saying. I had to watch my back. That's</p> <p>22 what happened.</p> <p>23 Q. Did you pitch a story about a</p> <p>24 Harlem car dealership that Mr. Greenfield</p> <p>25 told you not to write unless you could</p>
<p>1 FENNER</p> <p>2 advance the story forward?</p> <p>3 A. Yes.</p> <p>4 Q. And did you pitch a story that had</p> <p>5 been covered by the New York Times earlier?</p> <p>6 A. The New York Times had written a</p> <p>7 story, that --</p> <p>8 Q. It is a yes or no question. Did</p> <p>9 you pitch a story that had been covered by</p> <p>10 the New York Times?</p> <p>11 A. The New York Times had also</p> <p>12 written -- had written the story earlier in</p> <p>13 the year.</p> <p>14 Q. And they had cited celebrities that</p> <p>15 had purchased cars there?</p> <p>16 A. No, it was a preview. The place</p> <p>17 hadn't opened up at that point.</p> <p>18 Q. Did Mr. Greenfield tell you that</p> <p>19 the story you were mentioning mentions the</p> <p>20 same celebrities as the New York Times story?</p> <p>21 A. Yes, because they had purchased</p> <p>22 cars at the dealership. Those facts didn't</p> <p>23 change.</p> <p>24 Q. Did the story that you pitched</p> <p>25 advance the story in Mr. Greenfield's view?</p>	<p>1 FENNER</p> <p>2 MR. THOMPSON: Objection.</p> <p>3 A. He didn't want to go with the</p> <p>4 story.</p> <p>5 Q. He didn't want to go with the story</p> <p>6 that you pitched?</p> <p>7 A. That I wrote.</p> <p>8 Q. Because you -- that you wrote</p> <p>9 because it did not advance the story,</p> <p>10 correct?</p> <p>11 A. He felt that it didn't advance the</p> <p>12 story.</p> <p>13 Q. Did you think that what you had</p> <p>14 submitted, you had advanced the story?</p> <p>15 A. The story was about the -- that</p> <p>16 this place had opened up and people were</p> <p>17 coming in, and it was the mood, the place of</p> <p>18 business was actually happening.</p> <p>19 Q. Other than that, did you think you</p> <p>20 had advanced the story?</p> <p>21 A. It was a good story.</p> <p>22 Q. Did you think you had advanced it?</p> <p>23 A. I thought it was a good story and</p> <p>24 we could have gone with it in the paper.</p> <p>25 Q. But you got Mr. Greenfield's point</p>

<p style="text-align: right;">Page 114</p> <p>1 FENNER  2 that it did not advance it beyond what the  3 times had published?</p> <p>4 A. I was waiting for him to offer up  5 suggestions so we could work and collaborate  6 to get in the paper.</p> <p>7 Q. Did you have go back to try to  8 advance the story, represent it with a new  9 angle?</p> <p>10 A. I did.</p> <p>11 Q. Did you ever get that angle? And  12 publish the story?</p> <p>13 A. The paper publishes the story. I  14 write the story.</p> <p>15 Q. Did you ever get that angle and was  16 that story ever published?</p> <p>17 A. The story was not published.</p> <p>18 Q. Did you ever get that angle?</p> <p>19 A. I would need to look at a copy of  20 the story.</p> <p>21 Q. As best as you can recall, did you  22 get that angle?</p> <p>23 A. It would refresh my recollection if  24 I read the story.</p> <p>25 Q. As you sit here today, do you</p>	<p style="text-align: right;">Page 115</p> <p>1 FENNER  2 recall any angle that you could obtain to  3 advance the story?</p> <p>4 A. I can't answer your question --</p> <p>5 Q. Because you don't recall?</p> <p>6 A. Because I would need to read the  7 story.</p> <p>8 Q. Did you feel that Mr. Greenfield's  9 criticism of what you presented in that  10 instance was unfair?</p> <p>11 A. Yes, he was blocking the story to  12 getting in the paper.</p> <p>13 Q. Did you think it was unfair?</p> <p>14 A. Yes. Everything that he did during  15 that time to me was blocking my success at  16 the paper.</p> <p>17 Q. Did Mr. Greenfield suggest to you  18 to go back to the dealership and be there  19 while a celebrity was buying a car?</p> <p>20 A. You can't manufacture a celebrity  21 walking in a car dealership --</p> <p>22 Q. Was that suggestion made to you?</p> <p>23 A. I believe I did return to the  24 dealership to see if we could see, at the  25 time we had visited the dealership on the</p>
<p style="text-align: right;">Page 116</p> <p>1 FENNER  2 second occasion, to see if there was any high  3 profile people buying the car that day.</p> <p>4 Q. And did you get that story?</p> <p>5 A. If I had a copy of the story in  6 front of me, it would refresh my  7 recollection.</p> <p>8 Q. The story wasn't published, right?</p> <p>9 A. That's correct.</p> <p>10 Q. Was Mr. Greenfield's reaction to  11 your story, to this story that you wrote, do  12 you believe that that was based on race  13 discrimination?</p> <p>14 A. Mr. Greenfield was on a campaign to  15 get me out the paper.</p> <p>16 Q. Any specific information, sir,  17 relating to the conversations you had with  18 Mr. Greenfield about this Harlem dealership  19 story that causes you to believe or conclude  20 that his decision was based on race  21 discrimination?</p> <p>22 A. Yes, because he used this fact in  23 my evaluation which was then used against me  24 as a tool -- he was trying to paint me as  25 incompetent.</p>	<p style="text-align: right;">Page 117</p> <p>1 FENNER  2 Q. So do you know of any acts that  3 occurred at the time this story was being  4 pitched and written that demonstrate that  5 Mr. Greenfield was motivated by race?</p> <p>6 A. Repeat the question.</p> <p>7 Q. Were there any facts that you know  8 of that occurred at the time the story was  9 being pitched and written that demonstrate  10 that Mr. Greenfield was motivated by race?</p> <p>11 A. At the time?</p> <p>12 Q. Yes.</p> <p>13 A. I can't -- at the time, I can't  14 discern that, but what I do now know or what  15 I knew then when I saw it in my evaluation  16 cast --</p> <p>17 Q. My question was at the time.</p> <p>18 A. No, I don't believe so.</p> <p>19 MR. THOMPSON: Mark, what time do  20 you want to break for lunch? It is 1  21 now.</p> <p>22 MR. LERNER: Let's go about another  23 ten minutes.</p> <p>24 MR. THOMPSON: Let's take a break.</p> <p>25 MR. LERNER: I'm almost done with</p>

<p style="text-align: right;">Page 118</p> <p>1 FENNER 2 this section. 3 MR. THOMPSON: Ten minutes is too 4 long. Ten minutes -- I mean, it is 1 5 o'clock. 6 MR. LERNER: Ken, you asked me what 7 time I would like to break and I said 8 about ten more minutes. 9 MR. THOMPSON: And I would like to 10 break now. What time -- I mean, we have 11 been here since 9:30, since 9:15. It is 12 1 o'clock. I think it is time to take a 13 break. 14 MR. LERNER: Ken, I am asking you 15 if I can go ten more minutes. 16 MR. THOMPSON: Try to do it before 17 ten minutes, Mark. I think it is unfair 18 to have the witness here, to have the 19 witness here who hasn't eaten anything 20 since this morning. 21 MR. LERNER: All right. 22 Q. Mr. Fenner, did there come a time 23 in 2008 when your editors told you that you 24 would be working as a street reporter -- 25 A. No.</p>	<p style="text-align: right;">Page 119</p> <p>1 FENNER 2 Q. -- as a runner? 3 A. No. 4 Q. Did that conversation ever occur? 5 A. No. 6 Q. Did you ever sit down with 7 Ms. Scialdone of HR and one of your editors 8 and have your -- have a discussion in which 9 your duties were revised to be a runner as 10 opposed to a general assignment reporter? 11 A. Which editor? 12 Q. Mr. Greenfield or Ms. Gotthelf? 13 A. Which one? 14 Q. Well, how many meetings did you 15 have with Ms. Scialdone during the course of 16 your employment? 17 A. At the time that I can recall, I 18 had two. 19 Q. When were those two meetings? 20 A. When I had the two performance 21 evaluations. 22 Q. Do you recall any other meetings in 23 with Ms. Scialdone in which your duties as a 24 reporter were discussed? 25 A. I can't recall that meeting. My</p>
<p style="text-align: right;">Page 120</p> <p>1 FENNER 2 title and my work was always as a senior 3 reporter at the paper. 4 Q. And were you ever advised in a 5 meeting that included Ms. Scialdone that your 6 duties would be those of a street reporter? 7 A. Was it written down? 8 Q. That's -- that is my question to 9 you? 10 A. It wasn't written down. Not that I 11 recall. 12 Q. What do you mean it wasn't written 13 down? Did it happen? 14 A. You are presenting me with these 15 evaluations and a final warning. And these 16 are all comments that they made about my 17 work. And what I am saying, the comment that 18 you are referring to is not included in these 19 papers. 20 Q. Was it -- were you verbally told 21 that your -- that your duties would be as a 22 street reporter? 23 A. Not that I recall, no. 24 Q. Was your job description ever 25 changed while you were at the Post? I don't</p>	<p style="text-align: right;">Page 121</p> <p>1 FENNER 2 mean your job title. I mean the description 3 of your duties as described to you by your 4 supervisors? 5 A. After I complained about the racist 6 criterium that was published in February of 7 2009, I was eventually banned from the 8 newsroom by Michelle Gotthelf and Dan 9 Greenfield. And during that time, they 10 changed my schedule. 11 Q. You mean your work schedule? 12 A. That's correct. 13 Q. Your hours? 14 A. That's correct. 15 Q. Did they make any other changes? 16 A. And in particular, on my Thursday 17 shift, they changed those hours from 2 to 10, 18 then told me that they were doing things 19 differently in the newsroom and they wanted 20 me to be a team player and pitch in for about 21 a month until they could get someone else to 22 cover that position. That position is a 23 junior position for a junior reporter. 24 Q. So one day a week, they gave you a 25 later shift, right?</p>

<p>1 FENNER</p> <p>2 A. On Thursday.</p> <p>3 Q. Did they move your other shifts</p> <p>4 to -- from 11 to 7 to 9 to 5?</p> <p>5 A. That's correct.</p> <p>6 Q. And did you -- were you agreeable</p> <p>7 to the shift change from 11 to 7 to 9 to 5?</p> <p>8 A. No.</p> <p>9 Q. Did you tell them you didn't want</p> <p>10 to do that?</p> <p>11 A. I told them that the schedule I had</p> <p>12 was working great for me. I have a teenage</p> <p>13 daughter who I am getting ready for college</p> <p>14 and I use my time in the evenings to get her</p> <p>15 ready and prep her for college life.</p> <p>16 Q. Well, wasn't it -- didn't it assist</p> <p>17 you to get home at 5 p.m. or have your shift</p> <p>18 end at 5 p.m. as opposed to 7 p.m. which</p> <p>19 worked four out of your five days when they</p> <p>20 made that change?</p> <p>21 A. If you are a New York journalist,</p> <p>22 you are never, ever, ever work 9 to 5.</p> <p>23 Q. So are you saying that that wasn't</p> <p>24 your schedule?</p> <p>25 A. What I am saying is there is always</p>	<p>1 FENNER</p> <p>2 demands that you have to tackle. There is</p> <p>3 always an extended assignment, there is</p> <p>4 always breaking news and if you want to be a</p> <p>5 part of that team, you have to be highly</p> <p>6 motivated, you have to be tenacious and you</p> <p>7 have to be relentless in getting those</p> <p>8 stories, I worked -- I never, I never ever</p> <p>9 finished a shift at 5. That's deadline.</p> <p>10 Q. Did you, after you performed the 2</p> <p>11 to 10 shift for a month, did you tell</p> <p>12 Michelle Gotthelf or Dan Greenfield that you</p> <p>13 wanted to be taken off that shift?</p> <p>14 A. Yes.</p> <p>15 Q. Did you put that in writing?</p> <p>16 A. Did I put it in writing?</p> <p>17 Q. Yes.</p> <p>18 A. We had a meeting where they</p> <p>19 presented me with a change. And I verbally</p> <p>20 told them -- I verbally told them my</p> <p>21 objections to it.</p> <p>22 Q. After doing it for four or five</p> <p>23 weeks, did you then go back and say this is</p> <p>24 not working out, I want to be -- I want to go</p> <p>25 back to an earlier shift?</p>
<p>1 Page 124</p> <p>2 FENNER</p> <p>3 A. I asked them if they had hired</p> <p>4 someone else for the junior position, if they</p> <p>5 had found someone.</p> <p>6 Q. What did they say?</p> <p>7 A. I can't recall at this time exactly</p> <p>8 what they said, but I remained working in</p> <p>9 that position from May until my date of</p> <p>10 termination.</p> <p>11 Q. Other than -- did you -- did you</p> <p>12 have any other conversations with them about</p> <p>13 that shift other than asking them if they had</p> <p>14 hired somebody?</p> <p>15 A. I told them it was outrageous that</p> <p>16 they were banning me from the newsroom. I</p> <p>17 felt like I was being treated differently</p> <p>18 than my white colleagues at the paper. I was</p> <p>19 told I needed to call in and get permission</p> <p>20 to enter the NewsCorp. building.</p> <p>21 Q. You didn't tell Dan Greenfield and</p> <p>22 Michelle Gotthelf that you believed you were</p> <p>23 being treated differently from white</p> <p>24 reporters, correct? You didn't say that to</p> <p>25 them, right?</p> <p>1 A. I couldn't -- I told them I thought</p>	<p>1 Page 125</p> <p>2 FENNER</p> <p>3 it was unfair.</p> <p>4 Q. You were sent out in the street?</p> <p>5 A. I was being banned from the</p> <p>6 newsroom.</p> <p>7 Q. But you didn't say I think you're</p> <p>8 doing this to me because I'm black and you're</p> <p>9 not doing it to my white colleagues? You</p> <p>10 didn't say that, right?</p> <p>11 A. I can't recall if I said that or</p> <p>12 not at the time.</p> <p>13 Q. You -- you never said that to Dan</p> <p>14 Greenfield or Michelle Gotthelf?</p> <p>15 A. But I did raise my objections to</p> <p>16 them about getting banned from the newsroom.</p> <p>17 Q. OK, but you didn't say -- you</p> <p>18 didn't raise your objection and say you are</p> <p>19 doing this to me because of my race, correct?</p> <p>20 A. I can't recall exactly everything</p> <p>21 that I said and what transpired in that</p> <p>22 meeting. But I raised my objections to them.</p> <p>23 Q. You never put in any complaint or</p> <p>24 EEOC charge or your affidavit that you said</p> <p>25 that to them, right? You have never alleged</p>

<p style="text-align: right;">Page 130</p> <p>1 FENNER  2 A. I believe I did.  3 Q. Is this written in your  4 handwriting?  5 A. Yes.  6 Q. Did you write it yourself?  7 A. Yes.  8 Q. What rating did you give yourself?  9 A. A 5.  10 Q. That's the highest rating  11 available?  12 A. That's right.  13 Q. And in the overall performance  14 summary section, you wrote, "Fenner needs to  15 sharpen his time management skills so he can  16 produce more exciting, hard-hitting  17 enterprise stories." Do you see that?  18 A. I do.  19 Q. And did you believe that to be  20 correct at the time that you wrote this?  21 A. Yes.  22 Q. So if your editors believed that  23 you needed to produce more hard-hitting  24 enterprise stories, you would agree with that  25 criticism, correct?</p>	<p style="text-align: right;">Page 131</p> <p>1 FENNER  2 A. I had produced --  3 Q. Mr. Fenner, would you agree with  4 that criticism, that you needed to produce  5 more hard-hitting enterprise stories?  6 A. That was my job, to produce  7 hard-hitting enterprise stories.  8 Q. Mr. Fenner, if your editors had  9 that criticism of you, you agreed with it?  10 You wrote it in this self-evaluation, right?  11 A. I did.  12 Q. You also listed in the  13 self-evaluation three stories that you  14 believed represented your overall  15 achievements at the Post during this review  16 period; a story about the appointment of  17 Archbishop Dolan, an interview of a passenger  18 that came out of the plane in a landed in the  19 Hudson River, and the story you did on the  20 church bus that went to watch the Obama  21 inauguration, right?  22 A. Yes.  23 Q. Those are the three stories that  24 you listed under "overall achievements,"  25 right?</p>
<p style="text-align: right;">Page 132</p> <p>1 FENNER  2 A. That's correct.  3 Q. And in citing them, you were  4 seeking to indicate what you thought were the  5 highlights of your year, fiscal year 2009  6 working for the Post, right?  7 A. Yes, this was representative of my  8 work.  9 Q. Well, it was representative of your  10 best work, right?  11 A. Some of my best work.  12 Q. The story about the gentleman who  13 was on the plane that landed in the Hudson  14 River, that was an interview of a guy who  15 came out of the water in his underwear,  16 right?  17 A. Correct.  18 Q. Isn't it true that both the New  19 York Times and the Associated Press  20 interviewed the same guy on the same day as  21 you interviewed him?  22 A. They probably did.  23 Q. So there was nothing unique or  24 extraordinary about that story, right?  25 A. It was a great story. It was</p>	<p style="text-align: right;">Page 133</p> <p>1 FENNER  2 unique. That's why I put it on my  3 self-evaluation. To get that story --  4 Q. Why was it unique if the New York  5 Times interviewed the same individual and the  6 Associated Press interviewed the same  7 individual?  8 A. It was unique because all of New  9 York media was there. Everyone was trying to  10 get that story. I don't know who else got  11 it, but it was my job to get it for the New  12 York Post.  13 Q. The coverage of the bus ride to  14 Washington DC to watch the Obama  15 inauguration, that was a single story,  16 correct?  17 A. That was a sidebar that was part of  18 the inauguration package that the Post  19 produced when Obama took the office, the oath  20 of office. And when I had -- when I was  21 working on the Miracle on the Hudson story, I  22 was the lead reporter for the paper. That  23 was the day when the airplane crashed into  24 the ocean and Michelle Gotthelf called my  25 name across the newsroom and dispatched me as</p>

1 FENNER  
 2 the first reporter. It was her knee-jerk  
 3 reaction to make sure she could send her best  
 4 reporter to this big event that happened in  
 5 New York.

6 Q. But you did not write the news  
 7 story on the "Miracle on the Hudson,"  
 8 correct?

9 A. I worked with many -- there was  
 10 probably like 15 to 20 reporters who worked  
 11 on that story. I don't have the exact  
 12 number --

13 Q. Your byline went on the story of  
 14 the interview of one of the passengers,  
 15 right?

16 MR. THOMPSON: Mr. Lerner, please  
 17 don't interrupt the witness when he is  
 18 testifying and trying to answer.

19 Q. Correct?

20 A. What was your question?

21 Q. Your byline went on the story of  
 22 the interview of one passenger, right?

23 A. No, I believe my byline was on the  
 24 main body of a --

25 Q. You believe it was?

1 FENNER  
 2 A. I don't have it in front of me, but  
 3 I believe my byline was the lead byline in  
 4 the story.

5 Q. If we looked at the paper's  
 6 archives, we could determine whether or not  
 7 your byline was on there, right?

8 A. I guess we could.

9 Q. What did you report with respect to  
 10 your work that was other than the interview  
 11 of the guy who came out of the water in his  
 12 underwear?

13 A. I was writing about the emergency  
 14 services -- the emergency -- the first  
 15 responders who were rushing to save the  
 16 people who were trapped on the plane as it  
 17 was slowly submerging into the icy waters of  
 18 the Hudson.

19 Q. Did you get any interviews of any  
 20 of those emergency responders?

21 A. I got many interviews and I filled  
 22 my notebook up that day.

23 Q. Did you interview any of the  
 24 emergency responders?

25 A. If I had the story in front of me,

1 FENNER

2 it would refresh my recollection.

3 Q. You don't have a recollection now  
 4 of having done that though, right?

5 A. If I interviewed any of the first  
 6 responders?

7 Q. Yes.

8 A. I interviewed probably more than 20  
 9 people that day, so.

10 Q. Did you interview the ferry boat  
 11 captain that was first on the scene?

12 A. I can't recall exactly -- I can't  
 13 recall if I interviewed the ferry boat  
 14 captain.

15 Q. How many other reporters were sent  
 16 by the New York Post to the scene that day?

17 A. Many.

18 Q. A dozen?

19 A. I don't have an exact number.

20 Q. Could be a dozen?

21 A. I would assume that it was all  
 22 hands on deck.

23 Q. And what does that mean in terms of  
 24 a number?

25 A. That means this, this was the --

1 FENNER

2 Q. What does that mean in terms of the  
 3 number of reporters?

4 A. That people would have been just  
 5 rushing to the scene.

6 Q. How many reporters is all hands on  
 7 deck?

8 A. I don't have an exact number for  
 9 you.

10 Q. Is it more than a dozen?

11 A. It could be.

12 Q. Is it more than 20?

13 A. It could be.

14 Q. In the story about the bus ride to  
 15 Obama's inauguration, you met a church group  
 16 at -- in the wee hours of the morning,  
 17 correct, about 2 o'clock in the morning?

18 A. That sounds right. It was  
 19 midnight.

20 Q. And you rode on the bus -- and the  
 21 buses departed New York and drove to  
 22 Washington DC to participate in the Obama  
 23 inauguration events, correct?

24 A. Correct.

25 Q. And when did you file the story on

1 FENNER

2 that bus ride?

3 A. Later on that afternoon. It was --  
4 I can't recall the exact hour. But there  
5 were like 2 or 3 million people packed into  
6 that area.7 Q. What was extraordinary about your  
8 reporting of that bus ride that caused you to  
9 list it as one of your main achievements for  
10 2009?11 A. We were able to show how New  
12 Yorkers who were connected to King were able  
13 to see King -- were able to see Obama become  
14 president. There were people on that bus who  
15 were members of the congregation at the time  
16 that King was assassinated and they -- they  
17 were making almost this sacred pilgrimage to  
18 DC to connect King's dream and the actuality  
19 of the United States had voted in Barack  
20 Obama as president.21 Q. Did you cover any other aspects of  
22 the Obama inauguration?23 A. My job was that sidebar I just  
24 mentioned, the Canaan congregation from  
25 Harlem, being one of scores of buses that

1 FENNER

2 made this massive caravan, and this bus, at a  
3 unique place in American history.4 Q. You also indicated in this  
5 self-evaluation your coverage of Archbishop  
6 Dolan's arranging for a family to adopt an  
7 severely handicapped child. Did you consider  
8 that to be one of your best achievements in  
9 that year?10 A. That would rank as one of the best  
11 achievements I have had as a journalist in my  
12 career. During this trip, this is when I was  
13 treated to a racially --

14 Q. Mr. Fenner --

15 A. -- hostile tirade.

16 Q. Mr. Fenner, the question was, the  
17 question was, was that one of your best  
18 achievements?

19 A. Yes.

20 Q. OK. Which story are you referring  
21 to with respect to Dolan? Is it the story  
22 about the adoption of the handicapped child?23 A. Specifically, the entire package  
24 was top notch.

25 Q. How did you obtain the interview?

1 FENNER

2 A. I wasn't finished.

3 Q. The piece about him -- you answered  
4 me. It was the entire package.

5 A. I was trying to finish my sentence.

6 Q. I need to move. I have a lot of  
7 questions to get through.8 MR. THOMPSON: You may have a lot  
9 of questions --10 MR. LERNER: We are going to call  
11 the court to get more time.12 MR. THOMPSON: You can call the  
13 court. You wanted to get more time  
14 before you started this deposition. You  
15 have repeatedly interrupted Mr. Fenner.  
16 You have to let him answer your  
17 questions.18 MR. LERNER: I need to have him  
19 answer the questions.20 MR. THOMPSON: He is answering your  
21 questions, Mr. Lerner. Let him.

22 Q. Do you recall the question?

23 A. This piece that you are referring  
24 to showed Dolan to be a miracle worker, the  
25 fact that this woman was pro life and needed

1 FENNER

2 the bishop's hand to help her find a safe  
3 home for her disabled child who suffered  
4 many, many disabilities.5 Q. Mr. Fenner, the question was, did  
6 you consider this to be one of your best  
7 achievements in that year? The answer is  
8 either yes or no. OK.9 How did you get the interview of  
10 Archbishop Dolan?

11 A. Which one? I did many.

12 Q. The one -- your first interview of  
13 Dolan?

14 A. I interviewed him at the parish.

15 Q. Were you assigned by your editors  
16 to go to Milwaukee to try to get that  
17 interview?

18 A. I was dispatched there.

19 Q. You were dispatched there. Was the  
20 interview set up before you left?

21 A. No.

22 Q. So you didn't have a source within  
23 the parish that enabled you to get that  
24 interview assignment, right?

25 A. I developed a source. That's why I

1 FENNER  
 2 was able to come up with the miracle story.  
 3 Q. And how did you get that interview  
 4 once you were out there in Milwaukee?  
 5 A. I asked if there were any recent  
 6 articles Cord covered in the Catholic Weekly  
 7 that mentioned Dolan and what kind of work he  
 8 did.  
 9 Q. Who did you ask that of?  
 10 A. I was asking a source in Milwaukee.  
 11 Q. Did they supply you with an article  
 12 about his arranging of the adoption of the  
 13 child?  
 14 A. No.  
 15 Q. So how did asking that question get  
 16 you the interview?  
 17 A. We had a back and forth. We were  
 18 talking and one question led to another.  
 19 Q. Did somebody come up with the idea  
 20 at the Post, come up with the idea of  
 21 providing, giving Dolan some gifts?  
 22 A. That was -- I made three trips to  
 23 Milwaukee on behalf of the New York Post and  
 24 I think this was after -- at some point, we  
 25 were bringing him Yankee and -- Yankee items

1 FENNER  
 2 and New York items.  
 3 Q. Whose idea was it to bring him  
 4 those items?  
 5 A. I'm not sure. You're asking if it  
 6 was the editor's or mine, is that your  
 7 question?  
 8 Q. Yes.  
 9 A. I guess we collaborated and came up  
 10 with that suggestion.  
 11 Q. And you regard the Dolan stories to  
 12 be some of your -- well, withdrawn.  
 13 Do you regard those assignments as  
 14 good assignments?  
 15 A. It was really difficult for me to  
 16 do my best work because what had happened to  
 17 me during that trip. Dan Greenfield --  
 18 Q. Were they good assignments, sir?  
 19 A. Dan Greenfield hit me --  
 20 MR. LIPPNER: Mark, let's call the  
 21 court.  
 22 A. -- with a whole load of curses.  
 23 Q. Mr. Fenner, excuse me. We are  
 24 going to need to call the court.  
 25 MR. THOMPSON: You can call the

1 FENNER  
 2 court.  
 3 MR. LIPPNER: Off the record.  
 4 MR. LERNER: Let's go off the  
 5 record.  
 6 THE VIDEOGRAPHER: The time is 2:30  
 7 p.m. We are off the record.  
 8 (Exhibit 8, document Bates stamped  
 9 NYPFL 261 marked for identification, as  
 10 of this date.)  
 11 (Exhibit 9, document Bates stamped  
 12 NYPFL 248 marked for identification, as  
 13 of this date.)  
 14 (Recess)  
 15 THE VIDEOGRAPHER: The time is 3  
 16 p.m., we are on the record.  
 17 Q. Mr. Fenner, did you consider the  
 18 assignment to cover the appointment of  
 19 Timothy Dolan to be -- the Archbishop of New  
 20 York, to be an assignment you were glad to  
 21 receive?  
 22 A. Yes.  
 23 Q. It was an important story for New  
 24 York, right?  
 25 A. That is correct.

1 FENNER  
 2 Q. Were you -- did you consider the  
 3 story of the bus trip that went to Washington  
 4 DC an important story?  
 5 A. Yes.  
 6 Q. You were glad to have gotten that  
 7 assignment?  
 8 A. Yes.  
 9 Q. Do you recall being reprimanded by  
 10 Dan Greenfield on two occasions for still  
 11 being in Teaneck, where you reside, in the  
 12 morning after being instructed to go to  
 13 another location?  
 14 A. Is that what this e-mail is?  
 15 Q. Exhibits 8 and 9, which are NYPFL  
 16 261 and 248 relate to such incidents.  
 17 A. Yes.  
 18 Q. And in one of the incidents, you  
 19 had spoken to him and he had directed you to  
 20 Brookdale Hospital in Brooklyn for a story,  
 21 and when he called you sometime after that,  
 22 you were still in Teaneck and you told him  
 23 that, correct?  
 24 A. I believe so, yes.  
 25 Q. And you told him that you had had

<p>1 FENNER  2 to run an errand before heading into the city  3 and you felt that you told him the truth  4 about that when he called you and you were  5 still in Teaneck.  6 On the other occasion, you had  7 been overnighted to Lanoka Harbor and you  8 called in that morning, you were in Teaneck  9 and he called you back a half an hour later  10 and you were still in Teaneck, correct?  11 A. This is true.  12 Q. And Dan was annoyed at you in both  13 instances and let you know that, correct?  14 A. Yes.  15 Q. And those incidents were in June  16 and August of 2009, right?  17 A. Correct.  18 Q. In the case of the August 2009  19 incident, you said that you were getting gas,  20 correct?  21 A. Yes, I might -- yes, I mentioned  22 that during the conversation.  23 Q. I would like to show you a document  24 called APA fiscal year 2009, it is NYPFL 472  25 through 475, and it will be marked as Fenner</p>	<p>Page 146</p> <p>1 FENNER  2 Exhibit 10.  3 (Exhibit 10, document Bates stamped  4 NYPFL 472 through 475 marked for  5 identification, as of this date.)  6 Q. Do you recognize this document,  7 sir?  8 A. Yes.  9 Q. Is this the APA that Michelle  10 Gotthelf and Dan Greenfield gave you in  11 September of 2009?  12 A. Yes.  13 Q. Is that your signature on the last  14 page?  15 A. Yes.  16 Q. And you did not respond to it with  17 employee comments, correct? At least no  18 written comments in the employee comment  19 section on the last page, correct?  20 A. No.  21 Q. So it is correct that you did not  22 write anything in that section, right?  23 A. That's correct.  24 Q. And did you read this APA when you  25 received it?</p>
<p>1 FENNER  2 A. I did read it.  3 Q. It rated you a 1 which is the  4 lowest possible rating that you can receive  5 which stands for unacceptable, does not meet  6 standards, correct?  7 A. That's correct.  8 Q. Do you allege that this performance  9 evaluation was a negative performance  10 evaluation because you are African American?  11 A. Yes.  12 Q. What is the basis of that  13 allegation?  14 A. Because the points in here are  15 false and untrue.  16 Q. And specifically what is false and  17 untrue?  18 A. It says he -- "but continues to  19 under perform at this level and is working as  20 a street runner at best."  21 Q. So you would agree you were hired  22 as a senior reporter, right?  23 A. Yes.  24 Q. And do you -- you believe that you  25 were not under-performing as a senior</p>	<p>Page 148</p> <p>1 FENNER  2 reporter?  3 A. I did great work that year.  4 Q. Were you -- go ahead.  5 A. I could enumerate many of the  6 stories that I worked on if you want.  7 Q. What are the stories that you feel  8 highlight yourself as a reporter for the Post  9 in the 2009?  10 A. During the course of the year, I  11 got an exclusive interview with William  12 Ayers, who was one of the founders of the  13 Weather Underground and it was linked to  14 Barack Obama as a friend or associate at --  15 during the Democratic nomination.  16 Also during that time, Hillary  17 Clinton was on the record for talking about a  18 mom in Ohio who was pregnant, she was  19 pregnant, a woman who was pregnant and she  20 had lost her baby because she didn't have  21 healthcare. I was able to obtain an  22 interview with her.  23 Gregg Birnbaum, who is an editor on  24 the desk, he covers the political, politics  25 for the paper, said I was doing good work and</p>

<p style="text-align: right;">Page 150</p> <p>1 FENNER  2 knew I was doing good work on that  3 assignment.  4 That was also the year I wrote the  5 inauguration story, the sidebar piece. It  6 was also the year in which I wrote about  7 Bishop Dolan coming to New York as a next  8 bishop.  9 I wrote a piece in November of '08  10 when Barack Obama had won the nomination, and  11 I was able to find some people who were at,  12 in Washington DC during the time King had  13 delivered the "I Have The Dream" speech and  14 it was also watching on television in Harlem  15 Barack Obama make this historic move by  16 winning the Democratic nomination. And there  17 is other stories, but those are several of  18 them.  19 Q. What was the piece that you wrote  20 about William Ayers?  21 A. He was -- I was in Chicago and  22 William Ayers was the center of the story and  23 people were trying to find out if Barack  24 Obama, who was then running for the  25 presidency, was a friend of William Ayers who</p>	<p style="text-align: right;">Page 151</p> <p>1 FENNER  2 was one of the founders of the Weather  3 Underground. And in addition to that, there  4 was another story --  5 Q. Did you break that story or had it  6 been -- the connection between Obama and the  7 Weather Underground been already reported on?  8 A. I didn't break the story, but I was  9 able to get William Ayers to speak while the  10 national media was focused on this issue.  11 Q. Were any of the stories that you  12 listed as in your 2009 year, were any of them  13 stories in which you broke news?  14 A. To have William Ayers speak on the  15 record is to break news. To get the widow  16 of -- the widower of a woman who died in Ohio  17 who had no health insurance talk for the  18 first time about this issue was breaking  19 news.  20 Q. These are, aren't these follow-ups  21 to news stories, but not breaking news?  22 A. William -- it was a follow-up, but  23 it was also breaking news.  24 Q. Because Ayers was interviewed?  25 A. That's news.</p>
<p style="text-align: right;">Page 152</p> <p>1 FENNER  2 Q. Did he say anything in that story  3 that had previously been not revealed?  4 A. I would need to read the story and  5 the story that was published didn't contain  6 all the facts from the interview that I  7 obtained with William Ayers.  8 Q. What is the definition of  9 breaking -- of when a reporter breaks news?  10 What does that mean, to break news?  11 A. You reveal new information about an  12 issue.  13 Q. Well, is merely revealing new  14 information, is that necessarily breaking the  15 news? Doesn't breaking news, breaking a news  16 story mean more than that?  17 MR. THOMPSON: Objection.  18 Q. It means bringing something to the  19 public attention that the public didn't know  20 about previously?  21 A. If the subject of the story is  22 speaking about an issue for the first time,  23 that would be breaking news.  24 Q. Was the trip to DC on the bus, was  25 that breaking news?</p>	<p style="text-align: right;">Page 153</p> <p>1 FENNER  2 A. That was an enterprise story.  3 Q. It was not breaking news though,  4 was it? It was a sidebar, right?  5 A. It was news. We were revealing and  6 telling the story about a community of people  7 who live in New York.  8 Q. Isn't it the fact that the Dolan  9 story involving the arrangement of the  10 adoption of a disabled child had been written  11 on in a Catholic online publication?  12 A. It could have been. I'm not  13 exactly sure.  14 Q. Isn't that where you got the story  15 from?  16 A. I had asked the source if there was  17 a Catholic weekly that was tracking the  18 efforts of Bishop Dolan. I didn't get the  19 information from the online. I had to locate  20 this woman, find her, spend hours to trust me  21 with her story.  22 Q. The fact of that adoption that  23 Dolan arranged, that adoption was already  24 online by the time you wrote the story for  25 the Post, correct?</p>

<p style="text-align: right;">Page 158</p> <p>1 FENNER  2 public, you are telling them new information.  3 There is no reason not -- there isn't a  4 reason to publish information that people  5 don't need to know.</p> <p>6 Q. So if they need to know it, in your  7 mind, it is breaking news?</p> <p>8 A. So there is two kinds of breaking  9 news.</p> <p>10 Q. It is one kind of breaking news?</p> <p>11 A. No, I said -- there is breaks news  12 like an emergency, and then there is also  13 publishing new information. You wouldn't  14 publish information if it had no merit to be  15 printed.</p> <p>16 Q. Were you gratified to be assigned  17 to the stories that you listed in 2009?</p> <p>18 A. Those were important stories, yes.</p> <p>19 Q. And they were good stories to get  20 assigned as a reporter, right?</p> <p>21 A. Yes.</p> <p>22 Q. That includes the story about  23 William Ayers, the story about Clinton  24 talking about the woman who lost her baby,  25 the piece on Obama's inauguration being</p>	<p style="text-align: right;">Page 159</p> <p>1 FENNER  2 watched by people who had seen the "I Have A  3 Dream" speech, right?</p> <p>4 A. Yes.</p> <p>5 Q. Do you -- do you, did you regard  6 the assignment to cover the David Letterman  7 affair to be a desirable assignment?</p> <p>8 A. That was a big story of the paper,  9 yes.</p> <p>10 Q. What about the story about the  11 Craig's list killer? That was a story --  12 that was a story of national interest, right?</p> <p>13 A. Correct.</p> <p>14 Q. Were you assigned to cover that?</p> <p>15 A. Correct.</p> <p>16 Q. And were you pleased to be assigned  17 that story?</p> <p>18 A. I was glad to be working for the  19 paper and contributing on that piece.</p> <p>20 Q. You also could have had a story  21 regarding an affair that led to the  22 resignation of the head of the Red Cross. Do  23 you recall that story?</p> <p>24 A. Yes.</p> <p>25 Q. That was a national -- story of</p>
<p style="text-align: right;">Page 160</p> <p>1 FENNER  2 national interest, right?</p> <p>3 A. Yes.</p> <p>4 Q. Were you glad to be assigned to  5 cover that story?</p> <p>6 A. Yes, it was a prominent story and I  7 was glad to work on that story.</p> <p>8 Q. Did you cover a story involving  9 David Copperfield, the illusionist?</p> <p>10 A. I did.</p> <p>11 Q. What was that story about?</p> <p>12 A. There was allegations that he had  13 drugged a woman, I believe it was on a  14 private island he owned, and he might have  15 sexually abused this woman. And the goal of  16 that story basically was to find the  17 magician, David Copperfield.</p> <p>18 Q. And in fact, the cops found 2  19 million dollars in a Las Vegas warehouse that  20 he owned, right?</p> <p>21 A. That sounds familiar.</p> <p>22 Q. It was a warehouse that had like a  23 concealed entrance, right?</p> <p>24 A. I was at that warehouse.</p> <p>25 Q. You traveled to Vegas to see that</p>	<p style="text-align: right;">Page 161</p> <p>1 FENNER  2 warehouse?</p> <p>3 A. I saw that warehouse.</p> <p>4 Q. Were you satisfied to be assigned  5 to cover that story?</p> <p>6 A. Yes.</p> <p>7 Q. You covered a story about A-Rod  8 dating a stripper behind his wife's back. Do  9 you recall that?</p> <p>10 A. I do.</p> <p>11 Q. That was a big story for New York,  12 right?</p> <p>13 A. Very big.</p> <p>14 Q. A-Rod was already playing for the  15 Yankees when you covered that?</p> <p>16 A. Correct.</p> <p>17 Q. Was that a good story for you to be  18 assigned to when you were a reporter?</p> <p>19 A. Yes, it was.</p> <p>20 Q. You covered a story in which a  21 woman stole the identity of an Ivy League  22 graduate and pretended to be that person?</p> <p>23 A. Yes, that was a very difficult  24 story and I did very well on it.</p> <p>25 Q. Do you consider that story to be a</p>

<p style="text-align: right;">Page 162</p> <p>1 FENNER  2 good story to have covered?  3 A. Yes, it was an important story for  4 the paper and I was able to obtain an  5 exclusive interview with Esther Reed while  6 she was -- while she was under arrest by U.S.  7 Marshals in a federal facility.  8 Q. You covered the stories about the  9 murders of Jennifer Hudson's family members,  10 right?  11 A. I did.  12 Q. That was a big national story as  13 well, right?  14 A. Yes.  15 Q. Good story to be assigned to?  16 A. That was an important story, yes.  17 Q. You covered the arrest of Joba  18 Chamberlain for DWI when he was out in  19 Nebraska, correct?  20 A. Yes, I did great work on that  21 story. We were able to find out that he had  22 been drinking. He was at a strip club. And  23 it caused him to fall into a fight with a  24 patron because he was being taunted that the  25 Red Sox were in the playoffs.</p>	<p style="text-align: right;">Page 163</p> <p>1 FENNER  2 Q. Were you glad to get the assignment  3 to cover that story?  4 A. I did great work on that story.  5 Yes, I was glad to get that assignment. It  6 was a difficult assignment and I was able to  7 do good work on it.  8 Q. You covered a story involving a  9 dispute between candidates in Alabama who  10 argued over whether one of them should keep a  11 contribution that they had gotten from  12 Charles Rangel's fund raising. Do you recall  13 that story?  14 A. Yes.  15 Q. Was that a good story for you to  16 cover for New York?  17 A. That was an important story for the  18 paper.  19 Q. Was it a good assignment for you?  20 A. Yes.  21 Q. Did you cover a story involving an  22 engineer that was killed on the day of his  23 graduation?  24 A. That was in Buffalo, New York, yes.  25 Q. Why was that story an important</p>
<p style="text-align: right;">Page 164</p> <p>1 FENNER  2 story?  3 A. This young man had grown up in a  4 housing project in the Bronx, and despite all  5 the challenges in his life, was able to get  6 to college, study engineering and make his  7 family proud, and on his graduation day, he  8 was killed at a party the day before he  9 graduated.  10 Q. Were you gratified to be assigned  11 to cover that story?  12 A. Yes. That was an important story  13 for the paper. I was glad to contribute.  14 Q. You covered Plaxico Burress  15 shooting himself in a nightclub, correct?  16 A. Yes, I was in Pittsburgh,  17 Pennsylvania for that story.  18 Q. Was that a story of national  19 interest?  20 A. Oh, yes.  21 Q. Was that a good story to be  22 assigned to cover as a reporter?  23 A. It was another one of the front  24 page stories that I covered during my tenure,  25 yes.</p>	<p style="text-align: right;">Page 165</p> <p>1 FENNER  2 Q. You covered a story about the  3 Olympic swimmer, Michael Phelps, getting  4 reported for smoking marijuana?  5 A. Yes, that was in Baltimore,  6 Maryland.  7 Q. That was a national scandal, right?  8 A. It could be worldwide.  9 Q. That was a good story to cover,  10 right?  11 A. It was an important story for the  12 paper and I was glad to contribute.  13 Q. You were glad to be assigned to  14 cover that?  15 A. Yes.  16 Q. Do you recall pitching a story to  17 Dan Greenfield about a man living in an old  18 bank building?  19 A. Yes.  20 Q. What was Dan's reaction to that  21 pitch?  22 A. He criticized me and shot it down.  23 Q. Why did he tell you he was shooting  24 it down?  25 A. I recall he didn't like the story.</p>

Page 166	Page 167
1 FENNER	1 FENNER
2 Q. Do you recall him telling you that	2 A. What's the question?
3 it was because you told him that it had been	3 Q. Did you dig up any new act facts to
4 covered by New York Magazine a year ago?	4 make the pitch more attractive?
5 A. That sounds familiar.	5 A. No, I wasn't able to because I
6 Q. Did you disagree with his opinion	6 wasn't allowed to report on the story.
7 that the story should be -- that the paper	7 Q. But a lot of times, you dig up
8 should take a pass on that story?	8 facts and angles to stories before you pitch
9 A. I strongly disagreed with his	9 them to your editors, right, to get them
10 opinion.	10 interested?
11 Q. And why, if the story had been	11 A. Sometimes.
12 covered by New York Magazine a year ago, why	12 Q. But you didn't do that in this
13 isn't Dan's -- why wouldn't Dan's position	13 case?
14 that the paper should pass on it be a	14 A. I needed the time to be freed up
15 justified one?	15 from other work that the paper would have had
16 A. Because you could always find new	16 me to do. In order to do the reporting on
17 angles, new developments, new changes in a	17 that story, I would have to not do or not
18 story. And you don't know that unless you do	18 cover any other assignments that the paper
19 the reporting and find out these new facts.	19 might have been interested in.
20 Q. Did you do any of that work and	20 Q. Why do you think that Dan's
21 present him with the new facts before you	21 decision not to assign you to cover a story
22 pitched it?	22 about a man living in a bank that had been
23 A. He shot me down before I had a	23 written on by a magazine that's published in
24 chance to dig and find out what we could.	24 New York, why do you think that decision was
25 Q. So that's a no?	25 the incorrect decision?
Page 168	Page 169
1 FENNER	1 FENNER
2 A. Because it would not have hurt to	2 A. Yes.
3 find out that if there was new information in	3 Q. Why? What's the factual basis for
4 it, new discoveries. You play with angles	4 your opinion that his decision not to cover
5 and you find new ways to get into a story.	5 that -- to have you not cover that story was
6 Q. Dan is entitled to his opinion and	6 based on race?
7 judgment as a senior editor at the Post,	7 A. They had already established a
8 isn't he?	8 history with me and -- of being racially --
9 A. He is and I'm also entitled to my	9 of him discriminating against me because I'm
10 opinion as a senior reporter, an experienced	10 black and he had no interest of advancing my
11 reporter who has a record of doing great	11 career or me doing good work because he
12 work.	12 wanted me out of the paper.
13 Q. But between the two of you, he is	13 Q. Mr. Fenner, we went through a
14 the ranking person in the paper, right?	14 litany of several dozen big stories of
15 A. He is the editor.	15 national and regional interest, all of which
16 Q. The responsibility to make the	16 were stories that you were pleased to be
17 decision falls on him, right?	17 assigned to and gratified and you said did
18 A. Correct.	18 good work.
19 Q. So you disagreed with his decision?	19 So how can you say he wasn't
20 A. That's right.	20 interested in advancing your career when he
21 Q. But did you think that his decision	21 and Michelle Gotthelf assigned you to all of
22 was unjustified or outrageous?	22 these extremely high profile stories? And
23 A. Yes.	23 the one he didn't want to send you on was the
24 Q. Did you think his decision was	24 one about a guy living in an old bank
25 based on race?	25 building?

<p style="text-align: right;">Page 170</p> <p>1 FENNER    2 MR. THOMPSON: Objection.    3 Q. How do you justify that statement,    4 sir?    5 A. The question is what?    6 Q. How do you justify saying that Dan    7 Greenfield didn't want to advance your career    8 by not sending you on a story to cover a man    9 living in an old bank building when he, in    10 fact, along with Michelle Gotthelf, sent you    11 on some of the biggest breaking stories in    12 the country during the time you worked at the    13 Post?    14 A. They both were openly hostile to me    15 during my tenure at the paper. They both    16 were screaming at me, and yelling at me,    17 throughout the course of my career.    18 Q. They were trying to get the best    19 work out of you, weren't they?    20 A. Yelling at me and cursing at me is    21 not getting the best work out of me.    22 Q. How many times did they yell at you    23 or curse at you?    24 A. Several.    25 Q. Several? How many? You testified</p>	<p style="text-align: right;">Page 171</p> <p>1 FENNER    2 that they cursed at you -- Dan Greenfield    3 cursed at you while you were in Milwaukee on    4 the Dolan matter. What other occasion do you    5 remember Dan Greenfield or Michelle Gotthelf    6 cursing or yelling at you?    7 A. During the Heath Ledger story, Dan    8 Greenfield was screaming and yelling at me.    9 He was berating me about my work.    10 Q. Was he trying to get better work    11 out of you?    12 MR. THOMPSON: Objection.    13 A. That wasn't getting better work out    14 of me, no.    15 Q. Was he trying to get you to do    16 something to cover the story more    17 aggressively?    18 A. I couldn't have covered the story    19 any more aggressively.    20 Q. In the Dolan incident, wasn't he    21 yelling at you, telling you to get yourself    22 to a location where Dolan was speaking that    23 morning?    24 A. He was cursing and yelling    25 obscenities at me.</p>
<p style="text-align: right;">Page 172</p> <p>1 FENNER    2 Q. But he was directing you to go to a    3 location where Dolan was speaking that    4 morning, right?    5 A. We were yelling about --    6 Q. Sir, I need you to answer this    7 question.    8 A. Question is again?    9 Q. He was directing you to go to a    10 location where Dolan was speaking that    11 morning, correct?    12 A. He wasn't directing me. He was    13 screaming and yelling at me and cursing at me    14 and yelling profanities at me. Like if you    15 want to hear those profanities, I can tell    16 you them.    17 Q. Where were you when that    18 conversation was going on?    19 A. I was five minutes away from the    20 Catholic parish.    21 Q. And where was Mr. -- where was    22 Archbishop Dolan speaking that morning?    23 A. At the parish.    24 Q. What was the event that he was    25 speaking at?</p>	<p style="text-align: right;">Page 173</p> <p>1 FENNER    2 A. There was a press conference that    3 morning.    4 Q. Are you sure of that?    5 A. Yes.    6 Q. And how did Mr. Greenfield, to your    7 knowledge, learn about that press conference?    8 A. It might have been through the    9 photo desk.    10 Q. He didn't learn about it from you?    11 A. I called the reporter. They had    12 hired a freelance photographer out of Chicago    13 and I called him to tell him he needed to get    14 to Milwaukee as soon as he could because    15 there was a press conference at a certain    16 hour. He informed me that he was an hour    17 away. And I believe he then in turn, after I    18 spoke to him, called the photo desk.    19 Q. And until you spoke to    20 Mr. Greenfield that morning, isn't it the    21 case that you were not planning to attend    22 that press conference?    23 A. That's false.    24 Q. Where were you -- you said you were    25 five minutes from the Catholic parish when</p>

1 FENNER  
 2 you spoke to him? Did you tell him that?  
 3 A. I didn't get a chance to tell him  
 4 that because he was yelling and cursing at  
 5 me.  
 6 Q. Well, where were you going at  
 7 that -- during that conversation? Were  
 8 you --  
 9 A. I was waiting for the photographer  
 10 to get closer to the city, to Milwaukee. I  
 11 was going to be attending the press  
 12 conference.  
 13 Q. But you were waiting for the  
 14 photographer to show up?  
 15 A. That's correct.  
 16 Q. And Mr. Greenfield was concerned  
 17 that if you continued to wait for the  
 18 photographer, the press conference might  
 19 begin without you being there, right?  
 20 A. We were in Milwaukee on central  
 21 time. Dan was in New York at eastern  
 22 standard time. There was plenty of time for  
 23 me to get to the press conference.  
 24 Q. Why were you waiting for the  
 25 photographer? You could cover the press

1 FENNER  
 2 conference without a photographer there,  
 3 right?  
 4 A. That's correct.  
 5 Q. So you could have gone -- you could  
 6 have gone to that press conference?  
 7 A. I did go.  
 8 Q. Without waiting?  
 9 A. I did go to the press conference.  
 10 Q. So why were you waiting before you  
 11 went until the photographer showed up?  
 12 A. I wanted to go together with him so  
 13 we could work as a team.  
 14 Q. And you could have -- you didn't  
 15 need the photographer there to do your job  
 16 which would be to report on what happened at  
 17 the press conference, right?  
 18 A. I did do my job.  
 19 Q. The question is you didn't need to  
 20 wait for the photographer to cover the press  
 21 conference, right?  
 22 A. If he had failed to show up, I  
 23 could have -- I would have reported on the  
 24 story without him there.  
 25 Q. Or you could cover the story with

1 FENNER  
 2 him arriving at a different time?  
 3 A. I could have. But it is better to  
 4 work in tandem.  
 5 Q. And --  
 6 THE VIDEOGRAPHER: I am sorry to  
 7 interrupt. There is a cell phone. It is  
 8 interrupting testimony.  
 9 (Pause)  
 10 Q. Mr. Fenner, what was Dan Greenfield  
 11 angry at during the conversation?  
 12 A. He was cursing and yelling at me  
 13 because I was not at the press conference and  
 14 it wasn't scheduled to start for another 30,  
 15 40 minutes.  
 16 Q. Did you tell him that you didn't  
 17 need to attend the press conference because  
 18 you had done an exclusive interview with him?  
 19 A. I told him that I had made  
 20 arrangements to get personal time with the  
 21 monsignor -- with the bishop after the press  
 22 conference.  
 23 Q. Did Mr. Greenfield take that to  
 24 mean that you were going to skip the press  
 25 conference and rely on the personal time you

1 FENNER  
 2 had with the archbishop?  
 3 MR. THOMPSON: Objection.  
 4 A. I didn't get it a chance to fully  
 5 explain what was going on.  
 6 Q. Because he got angry?  
 7 A. He was more than angry. He was  
 8 yelling and cursing at me and berating me.  
 9 Q. During the course of that  
 10 conversation, did he ever use a racial  
 11 epithet?  
 12 A. No.  
 13 Q. Did he ever say anything that  
 14 referred to the fact that you are African  
 15 American?  
 16 A. No.  
 17 Q. And what is your factual basis for  
 18 an assertion that that episode was caused by  
 19 Mr. Greenfield's animosity towards you based  
 20 on race?  
 21 A. He had never cursed at any other  
 22 white reporters, from my white colleagues at  
 23 the paper.  
 24 Q. And how would you -- but you're not  
 25 in a position to know all the conversations

## 1 FENNER

2 Mr. Greenfield has had with all of the  
 3 reporters that work for him, right?

4 A. I've talked to reporters. I've  
 5 been in the newsroom. I was at the paper for  
 6 two years. I'm basing this on my experience.

7 Q. You're basing it on experience that  
 8 you personally did not have, right?

9 A. This is my experience, yes.

10 Q. You're basing it on you -- did  
 11 you -- withdrawn.

12 How many reporters work for  
 13 Mr. Greenfield?

14 A. I don't have the exact number.

15 Q. More than 15?

16 A. That sounds right.

17 Q. Fifteen sounds right or more than  
 18 15?

19 A. You said more than 15 right?

20 Q. Yeah, it was probably what, 50?

21 A. That could be right.

22 Q. And you have no way of knowing all  
 23 of the conversations that Mr. Greenfield had  
 24 with all of his reporters over a period of  
 25 years, correct?

## 1 FENNER

2 there and what the fuck is wrong with you,  
 3 was there anything else that he said during  
 4 that conversation that was offensive and  
 5 inflammatory to you? I want to get the  
 6 whole -- I want to get the full picture of  
 7 what was said that was inflammatory.

8 A. What the fuck is wrong with you,  
 9 what the fuck are you doing there, get --  
 10 better get your fucking ass over there.

11 Those were the words he was using with me  
 12 during the conversation and this went on and  
 13 on and on. And I was telling him to refrain  
 14 from using that language with me.

15 Q. Did you tell any of the white  
 16 reporters in the -- in the newsroom about  
 17 this conversation with Dan?

18 A. Yes.

19 Q. Who did you tell?

20 A. Jeane MacIntosh.

21 Q. Anyone else?

22 A. Dan Mangan.

23 Q. Anyone else?

24 A. And other reporters.

25 Q. Did you ever tell human resources

## 1 FENNER

2 A. Not all.

3 Q. Well, would you even know -- would  
 4 you even -- would you even know of a fraction  
 5 of them?

6 A. I had spoken to my colleagues and  
 7 this -- for someone to curse and scream and  
 8 say what the fuck are you doing there, what  
 9 the fuck is wrong with you, those are  
 10 inflammatory, heated curse words.

11 Q. What else did he say besides that?

12 A. And if he had done that to another  
 13 white colleague of mine, I'm sure I would  
 14 have heard about it.

15 Q. Why are you sure you would have  
 16 heard about it?

17 A. Because it was so disrespectful, so  
 18 humiliating. That's how I felt.

19 Q. You believe any white reporter who  
 20 heard that, who heard curses from  
 21 Mr. Greenfield would tell you about it?

22 A. Information circulates in the  
 23 newsroom and that's the kind of --  
 24 information you usually hear in a newsroom.

25 Q. Besides what the fuck are you doing

## 1 FENNER

2 about it?

3 A. No.

4 Q. Did you ever tell the legal  
 5 department about it?

6 A. No.

7 Q. You, when you were hired by the  
 8 Post, there was a -- you received a manual  
 9 that included the Post's antiharassment,  
 10 antidiscrimination policies, correct?

11 A. I think it is from NewsCorp., yes.

12 Q. And you got that?

13 A. I recall being in the, a session  
 14 that was conducted by employees at NewsCorp.  
 15 about those policies you are referring to.

16 Q. So were you -- would you call that  
 17 like EEO training type of stuff?

18 A. I believe that's what they called  
 19 it.

20 Q. And you understand and understood  
 21 while you were employed at the Post that the  
 22 Post had an antidiscrimination policy and a  
 23 mechanism for complaining about  
 24 discrimination or harassment, correct?

25 A. I believe those points were covered

1 FENNER  
2 during the session.

3 Q. And you were aware that complaints  
4 of discrimination at the Post under the Post  
5 policies can be brought to the human  
6 resources department and/or the legal  
7 department, correct?

8 A. Can you -- if you say that's so, I  
9 believe that's true.

10 Q. Did you understand when you worked  
11 at the Post that complaints of discrimination  
12 or harassment could be brought to the HR or  
13 legal departments?

14 A. I think that's true.

15 Q. Did you understand that complaints  
16 of discrimination or harassment under the  
17 policies should be reported to HR and legal?

18 A. I understand that, yes.

19 Q. Yet, at no time during your  
20 employment at the Post did you go to HR or  
21 legal and notify them that you believed you  
22 were the victim of discrimination, correct?

23 A. That's correct. I didn't contact  
24 HR or legal, but I did find another mechanism  
25 to enforce my complaint.

1 FENNER

2 Q. Correct, right?  
3 A. He is not associated with  
4 NewsCorp., that is correct.

5 Q. And Journalisms is an online blog,  
6 is that correct?

7 A. They publish on the internet.

8 Q. And did you ever speak to Dan  
9 Greenfield about your interview at  
10 Journalisms?

11 A. I didn't speak to Dan Greenfield  
12 about my interview with Journalisms.

13 Q. Did you ever speak to Michelle  
14 Gotthelf about your interview with  
15 Journalisms?

16 A. I did not speak to Michelle  
17 Gotthelf about my interview with Journalisms.

18 Q. Did you ever speak to anybody in  
19 human resources or legal department about  
20 your interview with Journalisms?

21 A. I did not.

22 Q. Did you ever tell any of the senior  
23 managing editors or the editor-in-chief at  
24 the Post about your interview at Journalisms?

25 A. No.

1 FENNER

2 Q. And what mechanism was that?  
3 A. I had an interview with a media  
4 outlet called Journalisms and in that --  
5 during that interview, it was regarding a  
6 cartoon, a racist monkey cartoon that the  
7 Post published under the editors -- under Col  
8 Allan, the editor-in-chief that depicted  
9 Barack Obama, the president of the United  
10 States, as a dead chimpanzee.

11 Q. And you -- who did you actually  
12 speak to at that interview?

13 A. The reporter's name was Richard  
14 Prince.

15 Q. And Richard Prince is not  
16 associated with the New York Post, right?

17 A. No.

18 Q. He is an independent journalist who  
19 has a blog?

20 A. I believe he is connected to the  
21 Washington Post and the Maynard Institute and  
22 he runs a media column called Journalisms.

23 Q. And he is not associated with  
24 NewsCorp., correct?

25 A. No.

1 FENNER

2 Q. Do you have any basis for asserting  
3 that Dan Greenfield, Michelle Gotthelf or Col  
4 Allan ever read your interview with  
5 Journalisms?

6 A. Yes.

7 Q. And what is that?

8 A. After the Post published the racist  
9 monkey cartoon, they had hired Howard  
10 Rubinstein, who was a top notch PR firm in  
11 New York City. He was to mitigate and do  
12 crisis communications for the Post. People  
13 were literally taking to the streets to  
14 protest this cartoon because it was so  
15 racially offensive.

16 In that article that was published  
17 by Richard Prince, he says that he spoke to a  
18 spokeswoman for NewsCorp. and I believe that  
19 spokeswoman declined to give him a comment on  
20 the record.

21 Q. So Richard Prince sought a quote  
22 from the Post and the Post declined, is  
23 that --

24 A. He wanted an interview, yes.

25 Q. Other than that, do you have any

<p style="text-align: right;">Page 186</p> <p>1 FENNER    2 further reason for the assertion or your    3 belief, if you have this belief, that Dan    4 Greenfield or Michelle Gotthelf or Col Allan    5 had read or were aware of your interview with    6 Journalisms?    7 A. Yes.    8 Q. What else?    9 A. Days after the cartoon was    10 published, and then after Richard Prince's    11 story was published, I was in Milwaukee and    12 then I was cursed at and yelled at by Dan    13 Greenfield.    14 Q. Did Dan Greenfield mention the    15 interview you gave to Richard Prince during    16 your conversations with him when you were in    17 Milwaukee?    18 A. No.    19 Q. Have you ever asked Dan Greenfield    20 if he knew about your conversation with    21 Richard Prince?    22 A. No.    23 Q. Did you ever ask Michelle Gotthelf    24 that?    25 A. No.</p>	<p style="text-align: right;">Page 187</p> <p>1 FENNER    2 Q. Was that the first time Dan    3 Greenfield screamed at you?    4 A. No.    5 Q. What was the -- so the other -- so    6 there were times before you got an    7 interview -- you gave an interview with    8 Richard Prince that he screamed at you?    9 A. He would hang the phone up on me    10 during conversations.    11 Q. You mean he would hang up on you?    12 A. That's right. During the Heath    13 Ledger story, he was yelling and screaming at    14 me on the phone during that time.    15 Q. So if he screamed at you before you    16 gave the interview with Journalisms and he    17 screamed at you after you gave the interview    18 with Journalisms, what causes you to --    19 withdrawn.    20 How did Ms. Gotthelf's behavior    21 change after you published the article --    22 after you gave the interview in Journalisms?    23 A. Before the Journalisms interview    24 and after, she was nasty to me, yelling at    25 me, complaining about my story ideas, being</p>
<p style="text-align: right;">Page 188</p> <p>1 FENNER    2 dismissive of the stories I was pitching.    3 This was an ongoing -- after she assumed the    4 metro editor's job. This was an ongoing    5 situation I found myself in.    6 Q. You had received a bad performance    7 warning, a bad performance appraisal and a    8 performance warning in mid 2008, correct?    9 A. Yes, that's when I said I'm -- I    10 think I'm being set up.    11 Q. So you didn't get bad performance    12 reviews on account of the cartoon -- on    13 account of your comments about the cartoon,    14 right, because you had been getting those    15 prior to the cartoon?    16 A. You mean the first --    17 Q. The first ones were prior to the    18 cartoon?    19 A. That's correct.    20 Q. So you had already been yelled at    21 by Dan Greenfield, you had already gotten a    22 negative performance review and you already    23 had a performance warning long before the    24 cartoon was ever published, correct?    25 A. That's correct.</p>	<p style="text-align: right;">Page 189</p> <p>1 FENNER    2 Q. What was the statement that you    3 made that was published in the Journalisms    4 article? Do you recall it?    5 A. I recall a quote that was printed    6 in the Journalisms article was that it    7 churned my stomach. But if you have a copy    8 of it, it would refresh my recollection.    9 Q. That sounds right. Do you have any    10 reason to believe that Dan Greenfield was    11 offended by your saying that the cartoon    12 churned your stomach?    13 A. Can you repeat the question.    14 Q. Yeah, how do you know that Dan    15 Greenfield was upset at all by your statement    16 that the cartoon churned your stomach?    17 A. It seemed to me retaliation against    18 me for speaking out against the company about    19 the racist monkey cartoon.    20 Q. How do you know that Dan Greenfield    21 was offended by your statement that the    22 cartoon churned your stomach?    23 A. He had already been -- I had    24 already been subjected to a hostile work    25 environment by him, by Michelle Gotthelf and</p>

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<p>1 FENNER  2 by the publication of that cartoon.  3 Q. So you assumed, without ever asking  4 him, that he didn't like what you said in  5 that quote?  6 A. I assumed what?  7 Q. You never asked him whether or not  8 he was offended or not by your statement,  9 right?  10 A. I never asked him that.  11 Q. And you never asked Michelle  12 Gotthelf that either, right?  13 A. I never asked her that.  14 Q. How is the -- can you explain how  15 it is that the statement that the cartoon  16 churned your stomach was a -- is a complaint  17 about discrimination at the Post?  18 A. The article was about the racist  19 climate at the paper and it says three things  20 need to be fixed at the Post, and because the  21 cartoon was racist and the climate at the  22 paper was racist, it was suggested that some  23 kind of over haul needed to be done at the  24 paper.  25 Q. And my question is, your statement</p>	<p>1 FENNER  2 was the cartoon churned your stomach?  3 A. Correct.  4 Q. How is that a complaint about  5 discrimination against employees at the New  6 York Post?  7 A. It hit me at my core, my very, very  8 core, in my inner soul, to see a black man,  9 the president of the United States, depicted  10 as a dead chimpanzee, shot by white officers  11 under a banner, "We will have to find someone  12 else to write the stimulus bill."  13 It has been my experience as a  14 black man that -- and knowing history, that  15 you use -- you use cartoons to put people  16 down, to make them less than human before you  17 attack them.  18 Q. Richard Prince didn't publish in  19 his article any other quotes by you, correct?  20 A. That was the one quote that he used  21 in his story.  22 Q. Bear with me one moment.  23 Mr. Fenner, your complaint at  24 paragraph 72 states, the following makes the  25 following statement. "For example, defendant</p>
<p>1 FENNER  2 Greenfield admitted that the cartoon was in  3 poor taste and that he was not surprised that  4 the cartoon led to a storm of protests."  5 Is that a statement in your  6 complaint?  7 A. Can I read it?  8 Q. Yes. And your quote was he said it  9 was in poor taste, you said it churned your  10 stomach, right?  11 A. That's correct.  12 Q. It is a pretty similar sentiment,  13 wouldn't you agree?  14 A. No.  15 Q. Poor taste and churned your stomach  16 are not both similar sentiments?  17 A. In my view?  18 Q. Yeah.  19 A. No.  20 Q. How are they different?  21 A. I'm telling you that that cartoon,  22 that racist cartoon touched me in my soul and  23 deeply offended me. Poor taste is like  24 Mrs. Manners, you picked up the wrong fork  25 before you were cutting up a dish on your</p>	<p>1 FENNER  2 plate, that's poor taste.  3 Q. They are both negative views about  4 the cartoon, right?  5 A. Yes.  6 MR. LERNER: We have been going a  7 while. Let's take a five, ten minute  8 break.  9 MR. THOMPSON: Sure.  10 THE VIDEOGRAPHER: The time is 4:04  11 p.m. We are off the record.  12 (Recess).  13 THE VIDEOGRAPHER: The time is 4:28  14 p.m. We are on the record.  15 Q. Mr. Fenner, other than what we were  16 discussing before the break regarding your  17 quote in the blog Journalisms, are there any  18 other statements that you made publicly or to  19 New York Post management in which you  20 asserted that you were being discriminated  21 against on the basis of race?  22 A. No. But I thought that was the  23 best mechanism to reach a national audience  24 about my experiences as a black senior  25 reporter at the paper.</p>

<p style="text-align: right;">Page 194</p> <p>1 FENNER</p> <p>2 Q. In September of 2009, after you</p> <p>3 received that performance evaluation, the</p> <p>4 Post issued you a second final written</p> <p>5 warning, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And we are going to mark NYPFL 500</p> <p>8 as Fenner Exhibit 11.</p> <p>9 (Exhibit 11, document Bates stamped</p> <p>10 NYPFL 500 marked for identification, as</p> <p>11 of this date.)</p> <p>12 Q. Do you recognize Fenner Exhibit 11?</p> <p>13 A. I recognize it.</p> <p>14 Q. Did you receive this final written</p> <p>15 warning in September of 2009?</p> <p>16 A. Yes.</p> <p>17 Q. And is that your signature at the</p> <p>18 bottom?</p> <p>19 A. Yes.</p> <p>20 Q. And is it your position that this</p> <p>21 final written warning was issued to you on</p> <p>22 the basis of your race?</p> <p>23 A. That's correct.</p> <p>24 Q. And what is your factual basis for</p> <p>25 that assertion?</p>	<p style="text-align: right;">Page 195</p> <p>1 FENNER</p> <p>2 A. Because I disagree strongly with</p> <p>3 the points made in here and this was used as</p> <p>4 a tool to fire me.</p> <p>5 Q. Did you -- were you given this</p> <p>6 during a meeting?</p> <p>7 A. Yes.</p> <p>8 Q. Who was in the meeting?</p> <p>9 A. Michelle Gotthelf, Amy Scialdone,</p> <p>10 Dan Greenfield.</p> <p>11 Q. During that meeting, what did they</p> <p>12 say to you?</p> <p>13 A. They said many things. One of the</p> <p>14 things they said was you're not pitching</p> <p>15 enough enterprise stories, and during that</p> <p>16 conversation, I had asked for their guidance</p> <p>17 to describe a story that had recently run in</p> <p>18 the New York Post over the last two, three</p> <p>19 months, that they feel would merit an</p> <p>20 enterprise story.</p> <p>21 Neither Michelle nor Dan nor Amy</p> <p>22 could give me an answer. They sat silent and</p> <p>23 were unable to tell me or give me an example</p> <p>24 of a story that was an enterprise story</p> <p>25 published in the paper that they -- I should</p>
<p style="text-align: right;">Page 196</p> <p>1 FENNER</p> <p>2 use as a guideline for my work.</p> <p>3 Q. Isn't it a fact that you were</p> <p>4 arguing with them during that meeting about</p> <p>5 the content of this warning?</p> <p>6 A. I was strongly disagreeing with</p> <p>7 them about the contents enumerated here.</p> <p>8 Q. And you asked repeatedly, did you</p> <p>9 not, for an example of an enterprise story?</p> <p>10 A. I asked once and they were unable</p> <p>11 to give me one.</p> <p>12 Q. Didn't -- together, didn't you look</p> <p>13 at the, that day's paper, and didn't they</p> <p>14 show you stories that no other paper had that</p> <p>15 day?</p> <p>16 A. No. I asked them to give me an</p> <p>17 example of an enterprise story that ran over</p> <p>18 the last several months that they felt I</p> <p>19 should use as a guideline as an example of an</p> <p>20 enterprise story, and they -- I was</p> <p>21 dumbfounded and surprised that the three of</p> <p>22 them weren't able to give me one solid --</p> <p>23 were unable to point to one solid story.</p> <p>24 Q. Was there a copy of the New York</p> <p>25 Post there that was used during the course of</p>	<p style="text-align: right;">Page 197</p> <p>1 FENNER</p> <p>2 that meeting?</p> <p>3 A. I think there was a newspaper in</p> <p>4 the room.</p> <p>5 Q. Did anybody open it up and show it</p> <p>6 around and point to things inside the paper?</p> <p>7 A. I can't recall exactly if they did</p> <p>8 that, but I asked them straight ahead to name</p> <p>9 a story during the course of several months,</p> <p>10 not that paper -- it could have been in that</p> <p>11 paper and they could have cited that story.</p> <p>12 But I asked over a span of time and they</p> <p>13 weren't able to give me one solid story.</p> <p>14 Q. But weren't they calling your</p> <p>15 attention to stories in that day's paper</p> <p>16 during the meeting?</p> <p>17 A. We were talking about enterprise</p> <p>18 stories and I had asked them to cite an</p> <p>19 example of a story. They were unable, they</p> <p>20 were unable to cite one.</p> <p>21 Q. My question is narrower than that.</p> <p>22 During the course of the meeting, were they</p> <p>23 calling to your attention stories in that</p> <p>24 day's newspaper?</p> <p>25 A. I can't recall. If you have some</p>

<p>1 FENNER  2 information that would help me, I would  3 appreciate it.  4 Q. The information is in the question.  5 The question is do you recall --  6 MR. THOMPSON: Objection.  7 Q. Do you recall them calling to your  8 attention stories in the newspaper of that  9 day that was in the room?  10 A. The best answer I can give you is  11 to say -- because we were talking about that  12 day's paper and any subsequent paper that was  13 published over the last several months and  14 all I wanted was one. I actually would have  15 appreciated several. They were unable to  16 give me one, all three of them.  17 Q. As a senior reporter, isn't it  18 expected, Mr. Fenner, that you know what an  19 enterprise story is?  20 A. I do, I wrote many.  21 Q. So what was the purpose, other than  22 rhetorical, of your asking them to identify  23 enterprise stories that are published in the  24 Post?  25 A. I wanted them to give me a</p>	<p>Page 198</p> <p>1 FENNER  2 guideline, as something that they found,  3 meritorious, something that they found to be  4 a great story.  5 Q. But you just said you knew what an  6 enterprise story was and had written  7 enterprise stories?  8 A. That is correct.  9 Q. They know what an enterprise story  10 is and they have written and edited  11 enterprise stories, right?  12 A. Correct.  13 Q. So isn't the exercise of you asking  14 them, isn't that sort of just a challenge to  15 what they are instructing you, what they are  16 telling you?  17 A. Not at all.  18 Q. Wasn't it simply sort of a  19 combative or aggressive response in which you  20 were protesting what they were saying as  21 opposed to actually trying to be  22 constructive?  23 A. I saw it as an opportunity for them  24 to make it crystal clear that we could -- an  25 actual example we can look at and point to</p>
<p>1 FENNER  2 just like when I write my self-evaluations, I  3 point to specific stories of achievement.  4 Q. Do you think you had a different  5 definition of what an enterprise story is  6 than Mr. Greenfield and Ms. Gotthelf had?  7 A. I don't think it was different. I  8 don't think it was different, no.  9 Q. Well, if you're trying to ask them  10 to define what one is and give you an  11 example, did you think that you had a  12 different definition?  13 A. No, I thought -- I'm thinking that  14 clarity would help.  15 Q. What was the last enterprise story  16 that you did for the Post?  17 A. I wrote a piece about an off duty  18 cop who was killed during friendly fire --  19 Q. In Mount Vernon?  20 A. No, in Harlem, and he had just  21 finished his beat and he was a volunteer, --  22 he was a volunteer football coach for a team  23 in Brooklyn and I wrote a story about how his  24 presence would be missed with the young, with  25 the young players and the coaches in that</p>	<p>Page 200</p> <p>1 FENNER  2 community.  3 Q. Was that coach, was that cop named  4 Edwards?  5 A. Omar Edwards is his -- was his  6 name, is his name.  7 Q. Wasn't he shot in Mount Vernon or  8 White Plains?  9 A. He was shot on 124th Street by the  10 Triborough Bridge, and I covered that story  11 the night it happened. And what happened was  12 I had finished working my assignment around  13 10 o'clock. I had been off more than an hour  14 and I was heading home to pick up my daughter  15 when Hechtman called me and asked me if I  16 could head up there to cover the story.  17 And I did and I worked until about  18 2, 3 o'clock that night, in the morning to  19 cover the shooting of a hero cop, Omar  20 Edwards.  21 Q. Why is that an enterprise story?  22 A. Because it was showing a hero cop  23 was volunteering his time in the community  24 with young men who were playing sports and  25 looking to spend their time doing positive</p>

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<p>1 FENNER  2 activities. It showed that he was more than  3 just a hero cop, but a contributor to the  4 livelihood of the Brooklyn community.  5 Q. You told us earlier that an  6 enterprise story was a story that involves  7 research, it involves background, and it is a  8 unique way of presenting news, right?  9 A. Correct.  10 Q. And this is a story that you get a  11 call in your car from an editor, it is  12 happening that night, were your words, and  13 you are dispatched to that location and you  14 write a story for the following day, right?  15 A. That story ran weeks later.  16 Q. Well, do you know how many words  17 that story was?  18 A. I didn't count it.  19 Q. 149 words. That's a short story,  20 right?  21 A. Can I see it?  22 Q. Do you have the binder of articles  23 in front of you?  24 A. I do.  25 Q. Look at NYPFL 2901. It is toward</p>	<p>1 FENNER  2 the back.  3 A. FL?  4 Q. Sorry, I said it was towards the  5 back. It is really not. It is more in the  6 middle. 2901 is the number.  7 A. I have it.  8 Q. Have you had a chance to look at  9 it?  10 A. Let me read it.  11 This story was edited and cut,  12 deeply cut.  13 Q. Do you still believe this story is  14 an enterprise story?  15 A. Yes.  16 Q. It is not even 150 words? But it  17 is an enterprise story?  18 A. The editors cut it.  19 Q. What did they cut?  20 A. The body of the story.  21 Q. Do you know who cut it?  22 A. I do not.  23 Q. Do you know why they cut it?  24 A. No. Many times they cut stories  25 for space. Could be other breaking news</p>
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<p style="text-align: right;">Page 206</p> <p>1 FENNER  2 A. No, I was still working and  3 expected to work to produce enterprise  4 stories and my supervisors have the ultimate  5 say on my shift and what I do. I was still  6 required to cover out-of-town assignments,  7 breaking news, and produce enterprise  8 stories.</p> <p>9 Q. But you -- your work was primarily  10 the work of a runner reporter, correct?</p> <p>11 A. No, that's not true. I did a  12 variety of assignments.</p> <p>13 Q. In the performance warning, it  14 says, in the last paragraph, "Working as a  15 runner for someone with your experience and  16 at your level as a senior reporter is simply  17 unacceptable and cannot continue any longer."</p> <p>18 My question is, is it accurate when  19 they said you were working as a runner?</p> <p>20 A. I disagree with the critiques in  21 this final written warning.</p> <p>22 Q. Do you agree that you had been  23 demoted into working as a runner?</p> <p>24 A. No, the expectation and the work I  25 did was that of a senior reporter.</p>	<p style="text-align: right;">Page 207</p> <p>1 FENNER  2 Q. Did you ever get demoted to runner?</p> <p>3 A. No.</p> <p>4 Q. When, after the cartoon ran and you  5 said you had a conversation with Dan  6 Greenfield about not coming into the  7 newsroom, was that a demotion to runner?</p> <p>8 A. That was a -- I was being banned  9 from the newsroom. I had to ask for  10 permission from my white editors to enter the  11 NewsCorp. building.</p> <p>12 Q. Was it -- were you demoted to  13 runner?</p> <p>14 A. No. The expectation was that I was  15 a senior reporter and the expectation that I  16 produce the work of a senior reporter was  17 still there.</p> <p>18 Q. What did you do each morning when  19 you began your shift?</p> <p>20 A. I was required --</p> <p>21 MR. THOMPSON: Objection.</p> <p>22 Q. You can answer.</p> <p>23 A. What did I do each morning what?</p> <p>24 Q. Starting in May 2009, what did you  25 do each morning when you began your shift?</p>
<p style="text-align: right;">Page 208</p> <p>1 FENNER  2 A. I was instructed to call the city  3 desk in the morning.</p> <p>4 Q. And await instructions regarding an  5 assignment, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Isn't that what a runner reporter  8 does?</p> <p>9 A. A runner reporter does those  10 things, yes.</p> <p>11 Q. Did Greenfield tell you to work out  12 in the field and that the city was your  13 office?</p> <p>14 A. Yes, that was part of the ban from  15 the newsroom.</p> <p>16 Q. So as best as you can recall, what  17 did Dan Greenfield say to you during the  18 conversation in which he told you that you  19 should be -- you should not be coming into  20 the newsroom?</p> <p>21 A. He told me he didn't want me in the  22 newsroom and that I had to ask for permission  23 before entering the building.</p> <p>24 Q. Anything else?</p> <p>25 A. He said many things but that was</p>	<p style="text-align: right;">Page 209</p> <p>1 FENNER  2 one of the things he said.</p> <p>3 Q. My question is for you to tell us  4 everything that he said during that  5 conversation that you recall.</p> <p>6 A. I can't recall all the facts and  7 all the things he said, but that was the big  8 theme.</p> <p>9 Q. So he did not want you in the  10 newsroom and call before coming in?</p> <p>11 MR. THOMPSON: Objection.</p> <p>12 A. Yes.</p> <p>13 Q. Did he tell you why he did not want  14 you in the newsroom?</p> <p>15 A. He and Michelle Gotthelf said that  16 they were doing things differently and they  17 needed me to help out on a certain shift  18 because they were short on manpower and they  19 said that they needed me to work this shift  20 temporarily and that we will replace you by  21 the end of the month.</p> <p>22 Q. Was the conversation in which you  23 were -- Dan said that he did not want you in  24 the newsroom the same conversation as when  25 you were told that your shift would change?</p>

<p>1 FENNER</p> <p>2 A. Yes.</p> <p>3 Q. Other than that one conversation, 4 were there any other conversations in which 5 you were told by Greenfield or Gotthelf that 6 they did not want you coming into the 7 newsroom?</p> <p>8 A. It was at that meeting when they 9 issued the ban.</p> <p>10 Q. My question is, were there any 11 other meetings or conversations in which they 12 communicated the same thing?</p> <p>13 A. I can't recall right now if there 14 were any other meetings besides that one.</p> <p>15 Q. Did they tell you they didn't want 16 you in the newsroom because of your race 17 being African American?</p> <p>18 A. They didn't use that language, no.</p> <p>19 Q. Did anyone tell you they didn't 20 want you in the newsroom because you were 21 African American?</p> <p>22 A. No, they didn't say that, but it 23 was consistent from the hostile treatment I 24 had been experiencing at the workplace.</p> <p>25 Q. But they didn't say that?</p>	<p>1 FENNER</p> <p>2 A. That is correct.</p> <p>3 Q. Did they say that the reason they 4 wanted you to call for permission before 5 coming to the building was because you're 6 African American?</p> <p>7 A. They didn't say that.</p> <p>8 Q. Did anybody tell you that that was 9 the reason for them requiring that?</p> <p>10 A. No.</p> <p>11 Q. Did they tell you why they wanted 12 you to call for -- to get permission before 13 coming into the office?</p> <p>14 A. They told me they were doing things 15 differently and that they were short of 16 manpower and they needed me to cover this 17 particular shift.</p> <p>18 Q. Did they ever say to you that the 19 reason they were requiring this of you was 20 because of comments that you made to 21 Journalisms about the cartoon?</p> <p>22 A. They didn't say that but I believe 23 it was retaliation for that act.</p> <p>24 Q. But they didn't say it and nobody 25 else told you that either, right?</p>
<p>1 FENNER</p> <p>2 A. No.</p> <p>3 Q. It is typical for reporters 4 covering events in the field to get their 5 assignment from the street or from their car, 6 do the reporting from the street, and call 7 the story in or file it by e-mail without 8 ever coming into the office, right?</p> <p>9 A. Can you repeat the question.</p> <p>10 Q. Yeah, it is typical for reporters 11 covering events in the field to get their 12 assignment when they are on the street or in 13 their car and to do the reporting in the 14 street and call the story in or e-mail it in 15 without ever coming into the office, right?</p> <p>16 A. There are many reporters who do 17 that.</p> <p>18 Q. There are reporters that can go 19 weeks without ever stepping foot in the 20 office, right?</p> <p>21 A. They call those runners, yes.</p> <p>22 Q. There are reporters that don't even 23 have desks in the New York Post offices, 24 right?</p> <p>25 A. Yes, but they are not black senior</p>	<p>1 FENNER</p> <p>2 reporters.</p> <p>3 Q. But they are reporters writing 4 stories, covering stories and covering 5 important stories that don't need to come 6 into the office to do that and don't have 7 desks, right?</p> <p>8 A. Ikimulisa Livingston was also 9 banned from the newsroom and she is a senior 10 reporter and she is African American.</p> <p>11 Q. That is not my question.</p> <p>12 A. Can you repeat your question.</p> <p>13 Q. Yeah, there are reporters covering 14 stories, covering important stories, that do 15 that without coming into the office and 16 without having desks, correct?</p> <p>17 A. I believe -- yes.</p> <p>18 Q. And some of those reporters are 19 white reporters, correct?</p> <p>20 A. Yes, they are white reporters, but 21 they are not senior reporters.</p> <p>22 Q. Do you know if Dan Greenfield or 23 Michelle Gotthelf ever told any reporters 24 other than you not to come into the office?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 214</p> <p>1 FENNER  2 Q. To be out in the field?  3 A. Yes.  4 Q. You do know that?  5 A. Ikimulisa Livingston was a reporter  6 who they told not to come in into -- who they  7 told not to come into the newsroom.  8 Q. Do you know if they have given that  9 instruction to any white reporters?  10 A. Not to my knowledge, no.  11 Q. How did you -- what knowledge do  12 you have on that question as to whether or  13 not they have given that instruction to white  14 reporters?  15 A. I know they treated me differently  16 than my white colleagues. I don't know of  17 other white reporters who were at my level  18 who they gave the same treatment.  19 Q. But you also don't know if there  20 are white reporters at your level who were  21 also told to be out in the field, right?  22 MR. THOMPSON: Objection.  23 Q. You don't know the conversations  24 that Mr. Greenfield and Ms. Gotthelf had with  25 every one of the white reporters, correct?</p>	<p style="text-align: right;">Page 215</p> <p>1 FENNER  2 A. No, I don't know every conversation  3 they had with all the white reporters. But  4 none of the white reporters who I spoke with  5 told me they had the same treatment.  6 Q. Were you ever, did you ever call  7 Mr. Greenfield and ask for permission to come  8 into the office?  9 A. I might have.  10 Q. And was that permission granted?  11 A. Yes.  12 Q. Do you remember how many times?  13 A. I can't recall how many times.  14 Q. Were you ever -- you had a swipe  15 card or identification that allowed you  16 entrance into the building, correct?  17 A. Correct.  18 Q. Was that ever shut off prior to the  19 time you were terminated by the Post?  20 A. Before I was terminated?  21 Q. Yes.  22 A. No.  23 Q. Were you ever -- did you ever show  24 up at the office and were told to leave the  25 offices, get out, after the instruction that</p>
<p style="text-align: right;">Page 216</p> <p>1 FENNER  2 Mr. Greenfield gave you?  3 A. No.  4 Q. Did you ever tell anybody about  5 Mr. Greenfield's instruction to you to be out  6 in the field and not come into the office  7 without permission?  8 A. Yes.  9 Q. Who did you tell?  10 A. I told Ikimulisa Livingston, Jeane  11 MacIntosh.  12 Q. Anybody else?  13 A. It might have been Dan Mangan, Len  14 Green, and there were others, but I can't  15 think of who those people are right now.  16 Q. Did Mr. Greenfield ever use the  17 word "banned"? Or is that word to describe  18 what occurred?  19 A. He said we don't want you coming  20 into the newsroom.  21 Q. OK. Ban was not his word?  22 A. He said we don't want you coming  23 into the newsroom.  24 Q. And he was -- he told you he wanted  25 you out in the field ready to go, ready to be</p>	<p style="text-align: right;">Page 217</p> <p>1 FENNER  2 dispatched to a story at 9 a.m., right?  3 A. Correct.  4 Q. How often did you come into the  5 office after Mr. Greenfield told you that he  6 wanted you out of the -- out in the field?  7 A. I can't give you an exact number,  8 but it was very, very few and I was so  9 humiliated, I had to wait until late in the  10 evening before coming into the newsroom so I  11 could get supplies and other things I might  12 have needed to do my job.  13 Q. On those occasions when you came in  14 late in the evening, did you call for  15 permission or did you feel at those times you  16 could come and go as you pleased?  17 A. I didn't call for permission, no.  18 Q. Did anybody ever turn you away from  19 the office on those occasions?  20 A. No.  21 Q. Mr. Greenfield never told you that  22 you had to come in after hours if you needed  23 supplies, did he?  24 A. No.  25 Q. Did you ever ask Mr. Greenfield for</p>

<p style="text-align: right;">Page 218</p> <p>1 FENNER  2 supplies, to come in for supplies during the  3 day?</p> <p>4 A. I can't recall.</p> <p>5 Q. Did Ms. Greenfield ever tell you --  6 I am sorry, did Ms. Gotthelf ever tell that  7 you you needed permission to come in, if you  8 came after hours?</p> <p>9 A. No.</p> <p>10 Q. Did Mr. -- did you ever ask  11 Ms. Gotthelf to come in for supplies?</p> <p>12 A. I can't recall. It's possible.</p> <p>13 Q. Did you ever call and ask  14 Ms. Gotthelf for permission to enter the  15 office?</p> <p>16 A. The answer is no because it was so  17 humiliating and disrespectful, I didn't want  18 to put myself through that.</p> <p>19 Q. Did you have a computer, a laptop  20 at the time?</p> <p>21 A. Yes.</p> <p>22 Q. Did it have wi-fi or 3G  23 capabilities?</p> <p>24 A. No, I had -- I would have to search  25 and hunt for a free wi-fi at a Starbucks to</p>	<p style="text-align: right;">Page 219</p> <p>1 FENNER  2 do my job.</p> <p>3 Q. And how would that work? So would  4 you write stories on your laptop at a  5 Starbucks or a cafe?</p> <p>6 A. I would write it up, send it in as  7 an e-mail, or I would call it in for my  8 notes.</p> <p>9 Q. When you were reporting stories  10 from the field, prior to Mr. Greenfield  11 instructing you not to come into the office,  12 didn't you file your stories the same way;  13 you would file them from the field from your  14 laptop, whether you were traveling in other  15 cities, traveling out in the boroughs, New  16 Jersey, Westchester, Brooklyn? You didn't  17 come into the office in the afternoon to  18 write your stories, right?</p> <p>19 A. Not all the time, no.</p> <p>20 Q. So you were filing stories from the  21 field prior to Mr. Greenfield's instruction  22 not to come in, right?</p> <p>23 A. Correct.</p> <p>24 Q. And you were able to do that using  25 a laptop computer, cell phone, and a wi-fi</p>
<p style="text-align: right;">Page 220</p> <p>1 FENNER  2 connection, right?</p> <p>3 A. Right.</p> <p>4 Q. And that's what runner reporters  5 that work for the Post frequently do to file  6 their stories, right?</p> <p>7 A. Senior reporters do it also. The  8 answer is yes.</p> <p>9 Q. Did you receive a car allowance  10 from the Post?</p> <p>11 A. Yes.</p> <p>12 Q. How much was that?</p> <p>13 A. I forget what the mileage rate was,  14 but for every mile I drove, there was a  15 mileage rate attached to it.</p> <p>16 Q. Do you know if other runners  17 received that allowance?</p> <p>18 A. I believe all reporters received  19 that.</p> <p>20 Q. Were you able to successfully  21 perform your job in spite of Mr. Greenfield's  22 requirement that you not come into the office  23 without permission?</p> <p>24 A. It was difficult but I did.</p> <p>25 Q. You were a successful reporter</p>	<p style="text-align: right;">Page 221</p> <p>1 FENNER  2 despite that, right?</p> <p>3 A. Yes.</p> <p>4 Q. You were successful in covering the  5 story that -- of the bus trip to the  6 Washington inauguration of Obama even without  7 a photographer with you, right?</p> <p>8 A. That was a very, very difficult day  9 to work. There were several million people  10 within a seven block radius of capital and  11 the monument. It was tough, but I did it.</p> <p>12 Q. Did you call the photo desk for a  13 photographer to go with you on that bus ride?</p> <p>14 A. I made several calls to the photo  15 desk, I put in written requests and I asked  16 Michelle Gotthelf several times to have a  17 photographer accompany me on that trip.</p> <p>18 Q. And this was the bus, the bus trip  19 that left at midnight?</p> <p>20 A. I arrived, did we -- it was in the  21 middle of the night.</p> <p>22 Q. And what did you want a  23 photographer to take pictures of?</p> <p>24 A. The event.</p> <p>25 Q. Which event?</p>

<p style="text-align: right;">Page 222</p> <p>1 FENNER</p> <p>2 A. The New Yorkers who were heading to</p> <p>3 DC.</p> <p>4 Q. What exactly did you think would be</p> <p>5 the images the photographer would capture?</p> <p>6 A. You never know what's going to</p> <p>7 happen. Once we got there, we didn't know</p> <p>8 what events might unfold, would unfold. So</p> <p>9 we have to be open and just be ready.</p> <p>10 Q. Well, so you wanted -- did you want</p> <p>11 them to take pictures of the bus ride in the</p> <p>12 middle of the night?</p> <p>13 A. You could have done a photo montage</p> <p>14 of people sleeping and partying and saying</p> <p>15 prayers. It could have been an incredible</p> <p>16 photo montage. I don't know. We will never</p> <p>17 know unless you make the effort to try to see</p> <p>18 what you can find out.</p> <p>19 Q. Do you know who made the decision</p> <p>20 at the New York Post not to assign a</p> <p>21 photographer to that trip?</p> <p>22 A. I was requesting from photo -- and</p> <p>23 I was seeking the aid of my editor, Michelle</p> <p>24 Gotthelf to get a photographer. Ultimately,</p> <p>25 the photo desk, the editors at the photo desk</p>	<p style="text-align: right;">Page 223</p> <p>1 FENNER</p> <p>2 have to decide, but she is one of the most</p> <p>3 powerful people in the newsroom. So she has</p> <p>4 the power to influence to make it happen.</p> <p>5 Q. Ultimately, the photo desk editors</p> <p>6 decide what stories get a photographer</p> <p>7 assigned, right?</p> <p>8 A. I don't know who would make that</p> <p>9 ultimate determination. Normally they do.</p> <p>10 This was a historic event. Clearly a</p> <p>11 once-in-a-lifetime in the history of the</p> <p>12 country event. They could have.</p> <p>13 Q. Did the Post have photographers</p> <p>14 covering other aspects of the Obama</p> <p>15 inauguration?</p> <p>16 A. I believe so.</p> <p>17 Q. Aren't stories published in the</p> <p>18 Post every day without photos?</p> <p>19 A. Some stories.</p> <p>20 Q. Didn't stories about the</p> <p>21 inauguration get published with photos?</p> <p>22 A. My story didn't have a photo.</p> <p>23 Q. But there were many stories about</p> <p>24 the Obama inauguration that ran during those</p> <p>25 several days, right?</p>
<p style="text-align: right;">Page 224</p> <p>1 FENNER</p> <p>2 A. Yes, if you want your story to get</p> <p>3 good play, to have a prominent position in</p> <p>4 the paper, you want to work hard to make sure</p> <p>5 there is a photographer accompanying your</p> <p>6 story, it is going to take up more real</p> <p>7 estate. It is going to have a bigger splash,</p> <p>8 a bigger look. It is going to heighten the</p> <p>9 strength of the story.</p> <p>10 Q. My question is, there were many</p> <p>11 stories that ran during those several days</p> <p>12 about the inauguration, right?</p> <p>13 A. There are many stories that ran.</p> <p>14 Q. And many of them had photographs,</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. So the Post was taking and</p> <p>18 publishing photos from the Obama</p> <p>19 inauguration, right?</p> <p>20 A. Yes.</p> <p>21 Q. In fact, the Post's coverage of the</p> <p>22 Obama inauguration got an award, right?</p> <p>23 A. Yes, with my help.</p> <p>24 Q. And with the help of the editors --</p> <p>25 A. I wasn't finished. Yes, with my</p>	<p style="text-align: right;">Page 225</p> <p>1 FENNER</p> <p>2 help, they won the New York Press Club Award</p> <p>3 that year.</p> <p>4 Q. After the conversation in which</p> <p>5 Mr. Greenfield told you to work out in the</p> <p>6 field and call for permission if you were</p> <p>7 going to come in, did Mr. Greenfield or</p> <p>8 Ms. Gotthelf ever yell at you?</p> <p>9 A. It was a -- it was continuously a</p> <p>10 hostile environment. They would --</p> <p>11 Q. My question is --</p> <p>12 MR. THOMPSON: He is not finished,</p> <p>13 he is not finished answering your</p> <p>14 question, Mr. Lerner. Please let him --</p> <p>15 MR. LERNER: He paused,</p> <p>16 Mr. Thompson.</p> <p>17 MR. THOMPSON: He was in the middle</p> <p>18 of answering. You interrupted him again.</p> <p>19 MR. LERNER: He paused and I</p> <p>20 thought he was finished.</p> <p>21 MR. THOMPSON: You were wrong.</p> <p>22 Q. Mr. Fenner, go ahead.</p> <p>23 MR. THOMPSON: Let the witness</p> <p>24 answer the question, please.</p> <p>25 A. I found it to be a hostile</p>

<p style="text-align: right;">Page 226</p> <p>1 FENNER  2 environment throughout my tenure, and after I  3 was banned, yes, they would continue to yell  4 at me, hang up the phone on me, be dismissive  5 of my story ideas.</p> <p>6 Q. What did they yell at you about  7 after that?</p> <p>8 A. The complaint, about my pitches for  9 enterprise stories and they were just  10 generally dismissive of my work, calling it  11 subpar.</p> <p>12 Q. You used the term in your  13 complaint, you used the term "segregated" to  14 refer to the New York Post. What did you  15 mean by that?</p> <p>16 A. Can you show me the complaint?</p> <p>17 Q. Sure. Do you have a copy of the  18 complaint that I handed to you a moment ago?</p> <p>19 MR. DATOO: I think you took it  20 back.</p> <p>21 MR. THOMPSON: Do you have an extra  22 copy?</p> <p>23 Q. For example, take a look at  24 paragraph 102 which I'll just read for the  25 record and then give this to you.</p>	<p style="text-align: right;">Page 227</p> <p>1 FENNER  2 "Mr. Fenner often wrote his stories  3 from Starbucks or other local coffee shops  4 while Ms. Livingston wrote her stories from  5 her car or home. In fact, like Mr. Fenner,  6 Ms. Livingston has been forced to perform all  7 her work as a reporter out of the newsroom  8 which is a racially segregated environment,  9 predominated by white males." 102.</p> <p>10 Do you agree that the newsroom is a  11 racially segregated environment?</p> <p>12 A. Can I read it?</p> <p>13 Q. Yes.</p> <p>14 A. The newsroom at the New York Post  15 is a sea of white reporters and white  16 editors, and as far as I know, they haven't  17 had a black editor work in the newsroom for  18 the last ten years. And there might be one  19 black reporter working inside the newsroom.</p> <p>20 Q. Who is that?</p> <p>21 A. That man is Leonard Green.</p> <p>22 Q. And is he excluded from the  23 newsroom?</p> <p>24 A. No.</p> <p>25 Q. When you use the term "segregated,"</p>
<p style="text-align: right;">Page 228</p> <p>1 FENNER  2 because it is -- and you say it is  3 predominantly white, are there areas in the  4 newsroom that are divided that are for white  5 people versus black people?</p> <p>6 A. No.</p> <p>7 Q. So when you use the term  8 "segregated," you are referring to the fact  9 that most of the employees are white, is that  10 correct?</p> <p>11 A. Right.</p> <p>12 Q. You made the allegation that there  13 is only one nonwhite editor in the newsroom.  14 Who is that one nonwhite editor?</p> <p>15 A. I think it was the business editor.</p> <p>16 Q. Jay Sherman?</p> <p>17 A. I believe that's his name.</p> <p>18 Q. Isn't it a fact that there are  19 other nonwhite editors? Do you know a  20 gentleman named Ricky Eng?</p> <p>21 A. No.</p> <p>22 Q. Was he a news editor?</p> <p>23 A. I don't know him.</p> <p>24 Q. Did you know Juan Rodriguez, an  25 assistant managing editor?</p>	<p style="text-align: right;">Page 229</p> <p>1 FENNER  2 A. I do.</p> <p>3 Q. He is Hispanic, right?</p> <p>4 A. He is a photo editor and he is  5 Hispanic, I believe.</p> <p>6 Q. When you said that there is only  7 one nonwhite editor, did you have a roster of  8 the -- all of the editors at the Post in  9 front of you when you did that?</p> <p>10 A. I just looked out into the newsroom  11 floor and that's what I saw.</p> <p>12 Q. You worked in the newsroom for many  13 years, right? Two years?</p> <p>14 A. For a long time.</p> <p>15 Q. Is the photo department on the  16 newsroom floor?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know Evelyn Cordon, is she a  19 photo editor?</p> <p>20 A. I don't know who she is.</p> <p>21 Q. Do you know Juan Arellano photo  22 editor?</p> <p>23 A. I believe I do.</p> <p>24 Q. Do you know David Rentas, a photo  25 editor?</p>

<p style="text-align: right;">Page 234</p> <p>1 FENNER  2 Q. Have you ever met Steve Dunleavy?  3 A. Yes.  4 Q. How many times?  5 A. Many.  6 Q. Where did you meet him?  7 A. As a competitor at the New York  8 Daily News and we worked together at the New  9 York Post.  10 Q. When you say you worked together,  11 do you mean you actually worked together on a  12 story or just that you worked at the same  13 company?  14 A. I would see him in the newsroom and  15 I would see him on assignment.  16 Q. Did you ever speak to him?  17 A. Yes.  18 Q. Did he ever say anything racist to  19 you?  20 A. He never said anything racist to  21 me, but I'm trying to recall if he would make  22 any racist remarks in my presence while we  23 were both at the story, on a story. That's  24 what I am trying to recall as you mentioned  25 right now.</p>	<p style="text-align: right;">Page 235</p> <p>1 FENNER  2 Q. Anything to add to that answer?  3 A. No.  4 Q. So you don't recall any racist  5 stories he made in your presence or any  6 racist remarks that he made in your presence,  7 right?  8 A. No.  9 Q. Did Endoziem -- did you and  10 Endoziem work at the Post at the same time?  11 A. I don't think so, no.  12 Q. So whatever comments Dunleavy made  13 to Endoziem, and Endoziem told you about when  14 you worked at the Daily News, happened before  15 you came to the Post and didn't continue to  16 Endoziem after you came to the Post, right?  17 A. I believe that's correct.  18 Q. Are you aware of any racist  19 comments made by Dunleavy that were made  20 during the two years you were working for the  21 Post? Or two and a half years?  22 A. I can't recall.  23 Q. Are you aware of any other person  24 at the Post making racist remarks?  25 A. I can't recall.</p>
<p style="text-align: right;">Page 236</p> <p>1 FENNER  2 Q. In your affidavit, you stated that  3 when you were traveling, the Post did not  4 provide you with the necessary tools to  5 succeed in your job, and you cited a denial  6 of a photographer on the trip to DC. Can you  7 think of any other tools that were denied to  8 you when you were traveling?  9 A. No.  10 Q. In paragraph 7 of your complaint,  11 you state that you were denied assignment  12 opportunities, specifically it reads,  13 "Plaintiffs were also discriminatorily denied  14 certain assignment opportunities based on  15 their race and/or color."  16 A. It says plaintiffs.  17 Q. Yes.  18 A. Can I see it?  19 Q. Sure. It is paragraph 7. I just  20 need that back when you're done. You may  21 have a copy of the complaint in front of you.  22 What assignment opportunities were  23 you discriminatorily denied based on race?  24 A. Think that line is referring to  25 Ikimulisa Livingston.</p>	<p style="text-align: right;">Page 237</p> <p>1 FENNER  2 Q. OK, so you don't believe that you  3 were denied any assignment opportunities  4 based on race, correct?  5 A. Correct.  6 Q. There is also an allegation that  7 you suffered discrimination in pay. Do you  8 believe that that refers to you?  9 A. Yes.  10 Q. In what respect did you suffer  11 discrimination in pay?  12 A. Well, I believe some of my  13 colleagues who had the same level of  14 experience that I had were earning more and  15 also if you had a poor evaluation, you could  16 not receive an increase in pay.  17 So the fact that I got poor  18 evaluations meant that I didn't get an annual  19 increase.  20 Q. What white reporters were paid more  21 than you with the same experience and  22 position?  23 A. I don't have the whole list, but I  24 believe Jeane MacIntosh earned more than I  25 did. Dan Mangan, and there were others, but I</p>

<p style="text-align: right;">Page 238</p> <p>1 FENNER  2 don't have all that information in front of  3 me.  4 Q. What's the basis of your belief  5 that MacIntosh and Mangan made more than you?  6 A. Jeane MacIntosh told me what she  7 was earning.  8 Q. What did she tell you?  9 A. I believe she told me she was  10 earning 95,000 dollars a year.  11 Q. And you were earning 92,000 dollars  12 a year at the time?  13 A. That's correct.  14 Q. What about Dan Mangan?  15 A. I don't know his exact salary, but  16 I believe he was earning more.  17 Q. Do you know how many years of  18 experience Jean MacIntosh and Dan Mangan have  19 as reporters?  20 A. I believe they have a similar  21 amount of years that I do.  22 Q. Now, do you know what years each of  23 them started at the New York Post?  24 A. No.  25 Q. Were they there when you started</p>	<p style="text-align: right;">Page 239</p> <p>1 FENNER  2 there?  3 A. They were already there when I  4 arrived.  5 Q. There came a time when --  6 withdrawn.  7 You got a big pay raise to come to  8 the New York Post, didn't you?  9 A. Yes.  10 Q. What was your annual salary at the  11 Daily News when you left there?  12 A. Around 75,000.  13 Q. Wasn't it actually 64,000 dollars?  14 A. With overtime --  15 Q. I asked you your annual salary.  16 A. What I brought home --  17 Q. My question was what was your  18 annual salary?  19 A. 64,000 dollars might be right.  20 Q. And the annual salary you got to  21 start at the Post was 92,000 dollars a year,  22 right?  23 A. Right.  24 Q. So you got a raise of almost 30,000  25 dollars a year to come to the Post, right?</p>
<p style="text-align: right;">Page 240</p> <p>1 FENNER  2 A. That's roughly correct.  3 Q. So did you ever complain at the  4 Daily News about being discriminatorily paid?  5 A. No.  6 Q. Did you think that getting a raise  7 to 92,000 dollars a year from 64,000 dollars  8 a year was a generous raise?  9 A. Based on my record -- yes. Based  10 on my record of achievement at the New York  11 Daily News and writing history making news  12 stories, I earned it.  13 Q. Was that raise an act of racism?  14 A. No.  15 Q. Do you know who decided what your  16 salary would be at the Post?  17 A. No.  18 Q. Were you asked what your annual  19 salary was at the Daily News when you were  20 hired by the Post?  21 A. Yes.  22 Q. And what did you tell them?  23 A. I'm thinking I might have said  24 around 75,000.  25 Q. And were you asked what your salary</p>	<p style="text-align: right;">Page 241</p> <p>1 FENNER  2 was or were you asked what your total comp  3 was?  4 A. I believe the question was what are  5 you earning.  6 Q. So at the Daily News, you had been  7 earning an annual salary of 64,000 dollars a  8 year and an overtime, that made it about  9 75,000?  10 A. Correct.  11 Q. Did anybody at the Post ask you  12 what your salary was exclusive of overtime?  13 A. I don't think I was asked that  14 particular question.  15 Q. Mr. Fenner, what year did you  16 become a reporter at the Daily News?  17 A. 1994.  18 Q. And in 1994, do you recall what  19 your annual salary was in 1994 when you  20 became a reporter?  21 A. Probably around 50,000 dollars.  22 Q. Correct. 51,000 dollars a year.  23 And that was in 1994?  24 A. Correct.  25 Q. And when you left the Daily News 13</p>

<p style="text-align: right;">Page 258</p> <p>1 FENNER</p> <p>2 A. I recall her telling me that unless</p> <p>3 I signed the severance package, she was</p> <p>4 forcing me to sign it, unless I signed it,</p> <p>5 I -- my 401 package would be in jeopardy and</p> <p>6 I would lose it.</p> <p>7 Q. How much was in your 401K at the</p> <p>8 Post?</p> <p>9 A. It was over 5,000 dollars.</p> <p>10 Q. And how much severance did the Post</p> <p>11 offer you?</p> <p>12 A. Maybe I believe it was eight weeks,</p> <p>13 I'm not sure. I think it was eight weeks.</p> <p>14 Q. Did she tell you you could have a</p> <p>15 lawyer review your severance agreement?</p> <p>16 A. She could have. I don't recall her</p> <p>17 saying that.</p> <p>18 Q. And with respect to what you are</p> <p>19 testifying was her deception, is your</p> <p>20 recollection on that clear?</p> <p>21 A. Yes.</p> <p>22 Q. And your clear recollection is that</p> <p>23 she said you had to accept the severance</p> <p>24 package to get your 401K?</p> <p>25 A. She said I had to sign these</p>	<p style="text-align: right;">Page 259</p> <p>1 FENNER</p> <p>2 documents and she wanted me to sign those</p> <p>3 documents then and there in her presence.</p> <p>4 Q. Did those documents include a 401K</p> <p>5 rollover?</p> <p>6 A. I would have to look at the</p> <p>7 documents to see if it refreshes my</p> <p>8 recollection. But I -- I can't recall.</p> <p>9 Q. Did you review the severance</p> <p>10 agreement that she provided to you?</p> <p>11 A. The one she put in front of me?</p> <p>12 Q. Yes.</p> <p>13 A. I believe I read it while I was in</p> <p>14 that meeting.</p> <p>15 Q. Do you recall that the agreement</p> <p>16 itself states, near where the signature block</p> <p>17 is, that you have been given the opportunity</p> <p>18 to review the agreement with legal advisors?</p> <p>19 A. If it said that, I knew I wasn't</p> <p>20 going to sign that document because I knew I</p> <p>21 couldn't trust her and my editors.</p> <p>22 Q. Do you remember the document saying</p> <p>23 that you had 21 days to consider whether or</p> <p>24 not to sign it?</p> <p>25 A. That sounds familiar.</p>
<p style="text-align: right;">Page 260</p> <p>1 FENNER</p> <p>2 Q. Let's mark this. We are going to</p> <p>3 mark NYPFL 519 through 521 as Fenner Exhibit</p> <p>4 13.</p> <p>5 (Exhibit 13, document Bates stamped</p> <p>6 NYPFL 519 through 521 marked for</p> <p>7 identification, as of this date.)</p> <p>8 Q. Take a look at that. And I want to</p> <p>9 focus your attention on paragraph 4.</p> <p>10 A. On the first page?</p> <p>11 Q. Yes -- on the second page,</p> <p>12 paragraph 4.</p> <p>13 A. Where it begins "This waiver"?</p> <p>14 Q. Paragraph 4 begins "Employee review</p> <p>15 period."</p> <p>16 A. OK.</p> <p>17 Q. Does it not state you have a period</p> <p>18 of 21 days to review and consider this</p> <p>19 agreement, you were advised to consult with</p> <p>20 an attorney before you signed this agreement.</p> <p>21 Do you see that?</p> <p>22 A. That's what this document says,</p> <p>23 yes.</p> <p>24 Q. And the sentence, "You are advised</p> <p>25 to consult with an attorney before you sign</p>	<p style="text-align: right;">Page 261</p> <p>1 FENNER</p> <p>2 this agreement" is in bold, right?</p> <p>3 A. Correct.</p> <p>4 Q. Did you read that paragraph on that</p> <p>5 day?</p> <p>6 A. Yes.</p> <p>7 Q. How did that meeting end?</p> <p>8 A. Terribly, I was terminated.</p> <p>9 Q. How did the meeting itself come to</p> <p>10 a conclusion? Did you go back to your desk,</p> <p>11 did you --</p> <p>12 A. I was further humiliated. I was</p> <p>13 escorted out of the NewsCorp. building by</p> <p>14 plainclothes security detail officers who</p> <p>15 work for the company.</p> <p>16 Q. What floor is -- what floor did the</p> <p>17 meeting take place on?</p> <p>18 A. Maybe the 15th.</p> <p>19 Q. So it wasn't on 10, which is where</p> <p>20 the newsroom is, right?</p> <p>21 A. Correct.</p> <p>22 Q. You didn't get escorted through the</p> <p>23 10th floor, right?</p> <p>24 A. I was escorted through the</p> <p>25 NewsCorp. building by these two security guys</p>

<p style="text-align: right;">Page 262</p> <p>1 FENNER  2 in plain clothes who look like NYPD  3 detectives and I was treated like common  4 criminal after I had worked so hard for the  5 paper.</p> <p>6 Q. Were you in handcuffs?  7 A. No.  8 Q. So you weren't treated like a  9 criminal under arrest, right?  10 A. All criminals are not handcuffed.  11 Q. You weren't led through the 9th or  12 10th floor where your coworkers all had their  13 desks and offices, right?  14 A. My coworkers travel throughout the  15 building. I was not led through the  16 newsroom.</p> <p>17 Q. Did you run into anybody on your  18 way out of the building?  19 A. Did I see anyone?  20 Q. Yes.  21 A. I didn't see any of my colleagues  22 as I was being escorted out of the building.  23 Q. Is there anything else about the  24 meeting that occurred that day that you  25 remember but have not described?</p>	<p style="text-align: right;">Page 263</p> <p>1 FENNER  2 A. It was the culmination of the  3 racist climate at the newsroom.  4 Q. Are there any events or occurrences  5 that happened that day in that meeting that  6 you haven't described?  7 A. I described many of them. I was --  8 when I was pulled off the assignment, I was  9 told to give my notes to one of my white  10 colleagues so they could finish the work that  11 I had started that day.  12 Q. Did anybody say anything during  13 your termination meeting about the Sandra  14 Guzman lawsuit?  15 A. No one said anything about it, but  16 I subsequently learned that she was filing a  17 complaint in federal court against the News  18 Corporation and New York Post the same day I  19 was terminated.  20 Q. Mr. Fenner, Mr. Fenner, the  21 question is, did anybody say anything during  22 your termination meeting about the Sandra  23 Guzman lawsuit?  24 A. They didn't say it to me. You are  25 talking about Michelle Gotthelf, Dan</p>
<p style="text-align: right;">Page 264</p> <p>1 FENNER  2 Greenfield or Amy Scialdone, is that who you  3 are referring to?  4 Q. Yes.  5 A. They did not mention that.  6 Q. Did anybody in the NewsCorp.  7 building mention that lawsuit to you that  8 day?  9 A. The only company employees I spoke  10 to that day were Amy Scialdone, Michelle  11 Gotthelf and Dan Greenfield.  12 Q. Did they say anything at that  13 meeting about the cartoon that had run in  14 February of 2009?  15 A. No.  16 Q. Did they say anything about Sandra  17 Guzman in that meeting?  18 A. They did not say that.  19 Q. Did they say anything about  20 Ikimulisa Livingston at that meeting?  21 A. No, they did not say anything about  22 Ikimulisa Livingston at the meeting.  23 Q. Do you know when the decision to  24 terminate you was made?  25 A. No.</p>	<p style="text-align: right;">Page 265</p> <p>1 FENNER  2 Q. Do you know who made that decision?  3 A. I would assume that Col Allan and  4 the top editors along with Michelle Gotthelf  5 and Amy Scialdone made that decision.  6 Q. But you do not know who made the  7 decision, correct?  8 A. Correct.  9 Q. Did you ask for a second chance or  10 another chance or additional chances to  11 retain your job during that meeting?  12 A. It was pointless.  13 Q. So you did not?  14 A. No.  15 Q. Did you say anything during the  16 meeting?  17 A. No.  18 Q. What is the basis for your  19 assertion that you were terminated due to a  20 belief on the part of your editors that you  21 would be a supportive witness to Sandra  22 Guzman?  23 A. Repeat the question.  24 Q. Sure, what is the basis for your  25 assertion that you were terminated because of</p>

<p style="text-align: center;">Page 266</p> <p>1 FENNER  2 a belief on the part of your editors that you  3 would be a supportive witness to Sandra  4 Guzman?</p> <p>5 A. Because she was retaliated against  6 by the paper after she complained about the  7 racist monkey cartoon and was -- that was  8 published earlier that year.</p> <p>9 Q. OK, but what makes you believe that  10 that your editors terminated you because they  11 thought you would support Sandra Guzman's  12 lawsuit?</p> <p>13 A. Sandra complained just like I did  14 about the racist climate at the paper. And  15 she had been terminated because of the  16 comments she had made in complaining about  17 the cartoon and then roughly two months  18 later, so was I.</p> <p>19 Q. What's the basis of your  20 information as to why Sandra Guzman was let  21 go from the Post?</p> <p>22 A. What's the basis of my information?</p> <p>23 Q. As to why Sandra Guzman was let go  24 by the Post?</p> <p>25 A. Because I know she complained--</p>	<p style="text-align: center;">Page 267</p> <p>1 FENNER  2 Q. What's the source of your  3 information?</p> <p>4 A. I read, I read, I read this long  5 e-mail complaint she filed, system-wide.  6 complaining about the cartoon. I saw her  7 complaint and recognized that she was  8 terminated for -- she was -- they were  9 retaliating against her for complaining about  10 the racist cartoon.</p> <p>11 Q. So you saw the e-mail that she sent  12 in February of 2009 she was terminated in  13 September of 2009. Based on that, you  14 concluded that her termination was  15 retaliatory, is that correct?</p> <p>16 A. Retaliatory and discriminated  17 against, yes.</p> <p>18 Q. Did any New York Post editor or  19 executive tell you why Sandra Guzman lost her  20 job?</p> <p>21 A. No.</p> <p>22 Q. Did any New York Post editor or  23 executive tell you that you were being  24 terminated because the Post was concerned  25 that you would support her lawsuit?</p>
<p style="text-align: center;">Page 268</p> <p>1 FENNER  2 A. No.</p> <p>3 Q. Do you know, do you have any reason  4 to believe the Post had knowledge of her  5 lawsuit at the time that the Post made its  6 decision to let you go?</p> <p>7 A. Can you repeat the question.</p> <p>8 Q. Yeah. Do you have reason to  9 believe the Post had knowledge of her lawsuit  10 at the time they made the decision to let you  11 go?</p> <p>12 A. It was filed -- I believe it was  13 filed in federal court the same day I was  14 terminated.</p> <p>15 Q. Do you know whether or not people  16 who decided to terminate Sandra -- I am  17 sorry, to terminate you knew about that  18 lawsuit at the time that they made that  19 decision to terminate you?</p> <p>20 A. Do I know that they knew about the  21 lawsuit?</p> <p>22 Q. Correct.</p> <p>23 A. No.</p> <p>24 Q. Other than what we have gone  25 through here today, did you experience any</p>	<p style="text-align: center;">Page 269</p> <p>1 FENNER  2 other discrimination at the New York Post?</p> <p>3 A. I was terminated.</p> <p>4 Q. We covered that.</p> <p>5 A. I was just trying to form my  6 thoughts.</p> <p>7 I was terminated because of my  8 race. I was banned from the newsroom. I was  9 screamed at, cursed at, and humiliated by my  10 white editors. I was sent out on many more  11 out-of-town assignments than my white  12 colleagues.</p> <p>13 I witnessed other people  14 experiencing racial discrimination at the  15 paper. Ikimulisa Livingston was working as a  16 reporter in the Queens courthouse and she was  17 removed from her position after a white  18 editor in the city desk had an argument with  19 Jesse Angelo who is a managing editor at the  20 paper and so she was forced out of her job.</p> <p>21 Leonard Green had written many  22 columns for the paper during his tenure, had  23 made requests to become a columnist, it was  24 denied.</p> <p>25 Neil Graves, another African</p>

<p>1 FENNER  2 American reporter experienced harassment and  3 mistreatment and I learned he was also  4 terminated from the newsroom because he is  5 African American.  6 I know Doug Montero, who is black  7 Latino, had a column at the paper and that  8 column was taken away from him and I had  9 experienced treatment that was different from  10 my white colleagues at the paper.  11 And I was retaliated against after  12 I had complained to Journalisms about the  13 racist cartoon that was published by the Post  14 and editor-in-chief Col Allan.  15 There is another reporter, his name  16 is Leonardo Blair. He had been terminated  17 from the paper after he had filed a lawsuit  18 with the New York Civil Liberties Union about  19 the stop-and-frisk campaign that the NYPD was  20 conducting against Latinos and African  21 Americans in New York City. And the reason  22 why he was terminated was, as I understand  23 it, is he had told his direct editor William  24 Gorta, G-O-R-T-A about it, and because he  25 didn't communicate this idea to Michelle</p>	<p>Page 270  1 FENNER  2 Gotthelf, he was terminated. That is my  3 understanding or what has been said about it.  4 But he was a great reporter doing great work  5 at the paper.  6 Q. White or African American?  7 A. He is African American.  8 Q. Do you have any personal knowledge  9 of the facts surrounding --  10 A. I was going to add another factor  11 to answer your question.  12 Q. Well, actually my question, sir,  13 was did you experience any other  14 discrimination at the New York Post. You're  15 telling me about what other people are --  16 what you are alleging other people  17 experienced?  18 A. It was part of the climate at the  19 paper. The other thing is, when I was banned  20 from the newsroom, I was also -- I  21 experienced a schedule change and given the  22 role of a junior reporter which was supposed  23 to be a temporary position, but lasted  24 through the tenure of my job until I was  25 terminated.</p>
<p>Page 272  1 FENNER  2 Q. Were you given the role of a junior  3 reporter or the shift of a junior reporter?  4 A. The shift.  5 Q. Do you have any personal knowledge  6 relating to why Leonard Green was not made a  7 columnist or why Neil Graves was let go?  8 A. You mean why the editors didn't  9 grant it?  10 Q. Yeah.  11 A. I didn't understand why. He had  12 written many columns that ran in the paper.  13 And he earned the right.  14 Q. Did you ever speak to the editors  15 about why they made that decision?  16 A. No.  17 Q. Did you ever overhear them  18 discussing why they made that decision?  19 A. No.  20 Q. Did you ever see anything written  21 by the editors or any New York Post  22 executives about why they made that decision?  23 A. No.  24 Q. Do you have any personal knowledge  25 of the reasons for Neil Graves' termination?</p>	<p>Page 273  1 FENNER  2 A. I believe it was because he was  3 African American and he also was ill.  4 Q. Have you ever asked the people that  5 made that decision why they made that  6 decision?  7 A. No.  8 Q. Have you overheard them talking  9 about it? Have you ever seen anything  10 written about it?  11 A. No.  12 Q. Did you ever ask the editors of the  13 Post why Doug Montero had his column taken  14 away?  15 MR. THOMPSON: Let the record  16 reflect that your colleagues are speaking  17 while you're asking the witness questions  18 and that's disruptive.  19 MR. LERNER: Oh, well, I wasn't  20 distracted by it but Mr. Fenner --  21 MR. THOMPSON: I am distracted as  22 his attorney. That's improper.  23 MR. LERNER: I didn't even notice  24 it, Ken.  25 MR. THOMPSON: I did. That's why I</p>

1 FENNER  
 2 am bringing it to your attention.  
 3 MR. LERNER: Thank you.  
 4 MR. THOMPSON: Just Ms. Lovinger  
 5 has been getting up throughout this  
 6 deposition and whispering in your ear and  
 7 giving you notes. That has been  
 8 distracting, Mr. Lerner. That's not the  
 9 way to have a deposition conducted. You  
 10 should ask questions. Not having the  
 11 colleagues jump up every couple of  
 12 minutes whispering in your ear.  
 13 The witness is here answering your  
 14 questions and I'm trying to focus.  
 15 MR. LERNER: Mr. Thompson leaving  
 16 aside whether or not that would even be  
 17 improper if it were going on --  
 18 MR. THOMPSON: It is disruptive.  
 19 MR. LERNER: It is most certainly  
 20 not going on. Ms. Lovinger has not been  
 21 getting up and coming over to me during  
 22 the course of this deposition every  
 23 several minutes.  
 24 MR. THOMPSON: Mr. Lerner, she has  
 25 been repeatedly getting up throughout the

1 FENNER  
 2 day. You know that.  
 3 MR. LERNER: I don't know it  
 4 because it is not happening.  
 5 MR. THOMPSON: You may disagree  
 6 with that, but we have witnesses who have  
 7 seen her get up at least ten times to  
 8 walk over to you and whisper in your ear  
 9 while you are asking Mr. Fenner questions  
 10 and we ask that it not be disruptive.  
 11 Q. Mr. Fenner, do you have any  
 12 personal knowledge as to why Doug Montero's  
 13 column was taken away?  
 14 A. I believe he was racially  
 15 discriminated against when it was taken away.  
 16 Q. I didn't ask you what you believed.  
 17 I asked you if you have any personal  
 18 knowledge regarding why the editors made that  
 19 decision? Did you ever speak to them about  
 20 it?  
 21 A. No.  
 22 Q. Did you ever overhear them talking  
 23 about it?  
 24 A. No.  
 25 Q. Did you ever see anything written

1 FENNER  
 2 down about it?  
 3 A. No.  
 4 Q. By the way, Mr. Graves lost his job  
 5 in 2011, correct?  
 6 A. I believe that's right.  
 7 Q. You were no longer at the Post as  
 8 of November 2009, right?  
 9 A. Correct.  
 10 Q. And what's the basis of your  
 11 assertions regarding Leo Blair?  
 12 A. He was doing -- he was a hard  
 13 working reporter.  
 14 Q. What is the basis of your knowledge  
 15 about Leo Blair's situation? I am asking you  
 16 your source?  
 17 A. It might have been Bill Gorta.  
 18 Q. And what did -- was Mr. Blair an  
 19 employee of the Post?  
 20 A. I think he was what they call a  
 21 perm-lancer, which meant he worked full time  
 22 but didn't have the benefits of a full-time  
 23 employee.  
 24 Q. And you said you might have heard  
 25 something from Bill Gorta?

1 FENNER  
 2 A. I did.  
 3 Q. When?  
 4 A. I spoke to Bill Gorta about it.  
 5 Q. When?  
 6 A. Soon after Leonardo Blair was  
 7 terminated from the paper.  
 8 Q. When was that?  
 9 A. I believe it was in '08.  
 10 Q. And what did Mr. --  
 11 A. I believe it was in the fall of  
 12 '08.  
 13 Q. What did Mr. Gorta tell you?  
 14 A. He told me that Leonardo Blair was  
 15 fired because he had filed this lawsuit  
 16 against the NYPD for their stop-and-frisk  
 17 practices. And Leonardo had told Billy that  
 18 this lawsuit was going to be issued at the  
 19 beginning of the week and Billy told me that  
 20 he had informed Leonardo Blair to reach out  
 21 to Michelle Gotthelf and I recall Billy  
 22 saying that he did not, Leonardo Blair did  
 23 not do that, and as a result, he was canned  
 24 from the paper.  
 25 Q. So in other words, he was canned

## 1 FENNER

2 Q. After your work schedule was  
 3 changed on Thursdays to the 2 to 10 shift and  
 4 you did it for a number of weeks --

5 A. Months.

6 Q. Well, my question is, after a few  
 7 weeks, did you make a request of Gotthelf or  
 8 Greenfield to be put back on an earlier  
 9 schedule on Thursdays?

10 A. Yes.

11 Q. And when did you do that?

12 A. Probably at the end of the month.

13 Q. Do you have a specific recollection  
 14 of making that request?

15 A. Yes.

16 Q. And who did you ask?

17 A. Greenfield.

18 Q. Where did you ask that?

19 A. I can't recall if I was in the  
 20 newsroom or if it was over the phone. It was  
 21 either/or.

22 Q. And what did he say?

23 A. No. I asked him if he had found  
 24 anyone to fill in that position. And he said  
 25 no.

## 1 FENNER

2 A. I preferred the 11 to 7 shift  
 3 because in the mornings, I could find  
 4 sources, meet with them, possibly share story  
 5 ideas before my shift began. It would have  
 6 afforded me the flexibility to do that.

7 Q. Well, you could still do that even  
 8 when you were working 9 to 5, couldn't you?

9 A. There is no 9 to 5 shift in  
 10 journalism. If you are working at 5, you are  
 11 working until 7.

12 MR. LERNER: Could I get a read on  
 13 the time elapsed?

14 THE VIDEOGRAPHER: Yes.

15 MR. LERNER: Let's take a quick  
 16 break, five minutes. And we will finish  
 17 up.

18 THE VIDEOGRAPHER: The time is 7:04  
 19 p.m. We are off the record.

20 (Recess)

21 THE VIDEOGRAPHER: The time is 7:20  
 22 p.m. We are on the record.

23 Q. Mr. Fenner, one of the things we  
 24 were talking about before we were on the  
 25 break is the Sandra Guzman lawsuit. Were you

## 1 FENNER

2 Q. Did you specifically -- all right,  
 3 is that all you said?

4 A. No, I said more.

5 Q. What did you say?

6 A. I said to him, you said that you  
 7 were going to find someone by the end of the  
 8 month for this position, that this was going  
 9 to be a temporary situation.

10 Q. And what did he say?

11 A. He said we haven't found anyone  
 12 yet.

13 Q. So you continued to remain in that  
 14 slot on Thursdays?

15 A. I had to.

16 Q. After that conversation, did you  
 17 ever revisit it with him?

18 A. I believe I did revisit it at one  
 19 point.

20 Q. Do you have a specific recollection  
 21 of doing that?

22 A. No.

23 Q. Were you OK with the 9 to 5 shift  
 24 on the other days?

25 MR. THOMPSON: Objection.

## FENNER

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 3 because in the mornings, I could find  
 4 sources, meet with them, possibly share story  
 5 ideas before my shift began. It would have  
 6 afforded me the flexibility to do that.

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 16 break, five minutes. And we will finish  
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 19 p.m. We are off the record.

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21 THE VIDEOGRAPHER: The time is 7:20  
 22 p.m. We are on the record.

23 Q. Mr. Fenner, one of the things we  
 24 were talking about before we were on the  
 25 break is the Sandra Guzman lawsuit. Were you

## 1 FENNER

2 aware that the Sandra Guzman lawsuit was  
 3 going to be filed before it was filed?

4 A. No.

5 Q. When did you learn about the Sandra  
 6 Guzman lawsuit?

7 A. I don't know if it was the same day  
 8 I was terminated or afterwards, from news  
 9 reports.

10 Q. You didn't know about it during  
 11 your termination meeting, did you?

12 A. No.

13 Q. You, when you worked at the Daily  
 14 News, you were a reporter there from '94 to  
 15 2007, right?

16 A. Right.

17 Q. How does the Daily News organize --  
 18 let me withdraw that.

19 Does the Daily News have runners  
 20 and rewrites the way the New York Post does?

21 MR. THOMPSON: Objection.

22 A. No one at the Daily News is called  
 23 a runner.

24 Q. Do they have people who go out and  
 25 gather facts and report news and then people

1 FENNER  
 2 (Exhibit 18, documents Bates  
 3 stamped AF151, 153, 158, 159, 169, 170,  
 4 3750, 3751, 3752, 3753 through 3774  
 5 marked for identification, as of this  
 6 date.)  
 7 THE VIDEOGRAPHER: The time is 7:56  
 8 p.m. we are off the record.  
 9 (Recess)  
 10 THE VIDEOGRAPHER: The time is  
 11 7:58, we are on the record.  
 12 Q. Mr. Fenner, are the letters  
 13 contained in Exhibit 18 cover letters that  
 14 you sent in your effort to -- to potential  
 15 employers in your effort to find a job?  
 16 A. Yes.  
 17 Q. I notice they are not signed. Did  
 18 you print these off your computer to --  
 19 A. I possibly did.  
 20 Q. Are they the final letters that you  
 21 sent to these employers?  
 22 A. I believe they are.  
 23 Q. And when you sent a cover letter to  
 24 an employer, do you endeavor to show yourself  
 25 to be a conscientious and careful writer and

1 FENNER  
 2 recall that?  
 3 A. I do.  
 4 Q. What's the basis for your  
 5 conclusion that you traveled more than white  
 6 reporters at the Post?  
 7 A. I would look in the paper and see  
 8 the coverage of the day and I knew I was sent  
 9 out more than my white colleagues on those --  
 10 on assignments during my tenure at the Post.  
 11 Q. Do you know if there are any white  
 12 reporters that traveled more than you?  
 13 A. I don't think there are. I'm  
 14 not -- I don't think so.  
 15 Q. Have you, other than kind of  
 16 looking in the newspaper and seeing where  
 17 people are on a given day, have you done any  
 18 kind of systematic analysis of how often  
 19 white reporters travel versus you traveled?  
 20 A. The best gauge of what's happening  
 21 in the paper would be to look in the  
 22 published paper and see datelines.  
 23 Q. Did you ever tally them up?  
 24 A. No.  
 25 Q. As you sit here today, do you know

1 FENNER  
 2 describer of your talents?  
 3 A. Yes.  
 4 Q. Do you believe these cover letters  
 5 reflect your good writing skills?  
 6 A. Yes.  
 7 Q. I want you to take a look at the  
 8 one that's marked AF3753. It is about ten  
 9 letters in, and it is to the human resources  
 10 manager of Purchase College.  
 11 A. Yes.  
 12 Q. Did you send this letter out?  
 13 A. I did.  
 14 Q. Did you get any response from it?  
 15 A. No.  
 16 Q. Did you get any response from the  
 17 letter you sent to CBS News?  
 18 A. From this letter, no.  
 19 Q. Did you proofread these letters  
 20 before you sent them out?  
 21 A. Yes.  
 22 Q. Is Mr. Fenner, you testified  
 23 earlier that you believe you were sent on  
 24 assignments involving travel more than your  
 25 white counterparts at the Post. Do you

1 FENNER  
 2 for a fact which reporters traveled how much?  
 3 A. I knew I traveled much more than  
 4 most.  
 5 Q. My question is, do you know how  
 6 much each white reporter at the Post  
 7 traveled?  
 8 A. I couldn't give you an exact  
 9 number.  
 10 Q. And if you were to give an  
 11 approximate number, it would -- how would you  
 12 come up with that approximate number as you  
 13 sit here right now?  
 14 A. As I sit here right now?  
 15 Q. Yes.  
 16 A. Well, I will give you my  
 17 recollection of reading the paper and looking  
 18 at date lines. That would be a gauge to use.  
 19 Q. Were there white reporters that  
 20 traveled close to how much you traveled?  
 21 A. What's close?  
 22 Q. Approximately the same?  
 23 A. I couldn't give you a hard answer  
 24 on that, but I know I traveled more than most  
 25 of my white colleagues.